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No. 29] NEW DELHI, JULY 12—JULY 18, 2015, SATURDAY/ASADHA 21—ASADHA 27, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 6 जुलाई, 2015

का.आ. 1410.—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं० 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए बिहार सरकार, गृह (पुलिस) विभाग की सहमति से दिनांक 21.01.2015 की अधिसूचना सं० 1/सीबीआई-80-02/2013 एच(पी)/495 और इसके दिनांक 25.06.2015 के शुद्धिपत्र सं० 1/सीबीआई 80-02/2013 एच (पी) द्वारा दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और न्यायाधिकार का विस्तार एतद्वारा पटना जन्कशन रेल पीएस पटना में दर्ज निम्नलिखित अपराधों के प्रयास, दुष्प्रेषण और षड्यंत्र, डाक चोरी सहित जांच-पड़ताल करने के लिए संपूर्ण बिहार राज्य पर करती है।

(i) 241/94, आईपीसी की धारा 255/256/257/258/259/260/380 के अधीन।

(ii) 131/98, आईपीसी की धारा 468/379/120 (ख) के अधीन।

(iii) 240/01, आईपीसी की धारा 380/120 (ख) के अधीन।

(iv) 242/01, आईपीसी की धारा 380/120 (ख) के अधीन।

(v) 243/01, आईपीसी की धारा 380/120 (ख) के अधीन।

(vi) 244/01, आईपीसी की धारा 380/120 (ख) के अधीन।

(vii) 245/01, आईपीसी की धारा 380/120 (ख) के अधीन।

(viii) 246/01, आईपीसी की धारा 380/120 (ख) के अधीन।

(ix) 162/07, आईपीसी की धारा 379/409/34/120 (ख) के अधीन।

(x) 343/08, आईपीसी की धारा 468/409/120 (ख) के अधीन।

[सं० 228/19/2015-एवीडी-II]

अजीत कुमार, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 6th July, 2015

S.O. 1410.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946),

the Central Government with the consent of the Govt. of Bihar, Home (Police) Department, *vide* Notification No. 1/ CBI 80-02/2013 H(P)/495 dated 21.1.2015 and its Corrigendum No. 1/CBI-80-02/2013 H(P) dated 25.6.2015, hereby extends powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar for investigation of the following Cases:

- (i) 241/94, u/s 255/256/257/258/259/260/380 IPC.
- (ii) 131/98, u/s 468/379/120(b) IPC.
- (iii) 240/01 u/s 380/120(b) IPC.
- (iv) 242/01 u/s 380/120/(b) IPC.
- (v) 243/01 u/s 380/120/(b) IPC.
- (vi) 244/01 u/s 380/120/(b) IPC.
- (vii) 245/01 u/s 380/120/(b) IPC.
- (viii) 246/01 u/s 380/120/(b) IPC.
- (ix) 162/07 u/s 379/409/406/34/120(b) IPC.
- (x) 343/08 u/s 468/409/120(b) IPC.

registered at Patna Junction Rail PS Patna, related to Postal theft including attempts, abetments and conspiracies in relation to the above mentioned offences.

[No. 228/19/2015-AVD-II]
AJIT KUMAR, Under Secy.

विदेश मंत्रालय

(सी.पी.वी प्रभाग)

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1411.—राजनयिक और कौसूलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार के द्वारा श्री कल्लोल मुखर्जी, सहायक को 08 जुलाई, 2015 से भारत के उच्चायोग, माले में सहायक कौंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं. टी. 4330/01/2015]
प्रकाश चन्द, उप सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 8th July, 2015

S.O. 1411.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorize Shri Kallol Mukherjee, Assistant, in High Commission of India, Male to perform the duties of Assistant Consular Officer with effect from 8th July, 2015.

[No. T. 4330/01/2015]
PRAKASH CHAND, Dy. Secy. (Consular)

आयुष मंत्रालय

नई दिल्ली, 18 मई, 2015

का.आ. 1412.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, आयुष मंत्रालय के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों, जिनके 95.45 प्रतिशत कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्द्वारा अधिसूचित करती है:—

1. “राष्ट्रीय भारतीय आयुर्विज्ञान संपदा संस्थान, हैदराबाद”
2. “राष्ट्रीय मौलिक आयुर्वेदिक विज्ञान अनुसंधान संस्थान, पुणे”

[सं. ई 11018/1/2013-आयुष (राभा)]
कुंदन सिंह टंगनिया, संयुक्त निदेशक (राभा)

MINISTRY OF AYUSH

New Delhi, the 18th May, 2015

S.O. 1412.—In pursuance of Sub-Rule(4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following offices under the administrative control of the Ministry of AYUSH, where 95.45% staff have acquired the working knowledge of Hindi:—

1. "National Institute of Indian Medical Heritage, Hyderabad"
2. "National Research Institute of Basic Ayurvedic Sciences, Pune."

[No. E-11018/1/2013-AYUSH (O.L.)]
KUNDAN SINGH TANGANIYA, Jt. Director (O.L.)

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 13 जुलाई, 2015

का.आ. 1413.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) का धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मित्रा एस. के प्राइवेट लिमिटेड, हाउसिंग बोर्ड कालोनी, एच बी-44, मधुबन, पारादीप जिला जगतसिंगपुर, ओडिशा-754142, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय, की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 और संख्या का.आ. 3978 तारीख 20 दिसम्बर 1965 से अनुसूची में विनिर्दिष्ट खनिजों और अयस्कों (समूह-I) अर्थात्, लौह अयस्क, मैंगनीज अयस्क, फेरो मैंगनीज, फेरो मैंगनीज लावा सहित और समूह-II मैंगनीज डाइऑक्साइड, क्रोम अयस्क क्रोम केंद्रित सहित, निरीक्षण के लिए निम्नलिखित शर्तों

के अधीन रहते हुए क्रमशः उक्त खनिजों और अयस्कों का पारादीप में, निर्यात से पूर्व निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात्:—

(i) मैसर्स मित्रा एस० के० प्राइवेट लिमिटेड, हाउसिंग बोर्ड कालोनी, एचबी-44, मधुबन, पारादीप, जिला जगतसिंगपुर, ओडिशा-754142, खनिज और अयस्क ग्रुप-I का निर्यात (निरीक्षण) नियम, 1965 और खनिज और अयस्क ग्रुप-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन उनके द्वारा अपनाई गई निरीक्षण की पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सविधाएं देगी और;

(ii) मैसर्स मित्रा एस० के० प्राइवेट लिमिटेड, हाउसिंग बोर्ड कालोनी, एचबी-44, मधुबन, पारादीप, जिला जगतसिंगपुर, ओडिशा-754142, इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद् समय-समय पर लिखित में दिए गए ऐसे निदेशों से आबद्ध होंगे।

[फा० सं० 4/2/2015- निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 13th July, 2015

S.O. 1413.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Mitra S.K. Private Limited, Housing Board Colony, HB-44, Madhuban, Paradip, Dist. Jagatsingpur, Odisha-754142, as an agency for a further period of three years with effect 27th July, 2015, for inspection of Minerals and Ores (Group-I), namely, Iron Ore, Manganese Ore, Ferromanganese including Ferromanganese Slag and Group-II Manganese Dioxide, Chrome Ore including Chrome Concentrates, specified in the schedule annexed to the notification of the Government of India in the Ministry of Commerce *vide* number S.O. 3975, dated the 20th December, 1965, and S.O. 3978, dated the 20th December, 1965 respectively, prior to export of the said Minerals and Ores at Paradip subject to the following conditions, namely:—

(i) that M/s. Mitra S.K. Private Limited, Housing Board Colony, HB-44, Madhuban, Paradip, Dist. Jagatsingpur, Odisha-754142, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965 and the Export of Minerals and Ores, Group-II (Inspection) Rules, 1965; and

(ii) that M/s. Mitra S.K. Private Limited, Housing Board Colony, HB-44, Madhuban, Paradip, Dist. Jagatsingpur, Odisha-754142, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F. No. 4/2/2015-Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1414.—केंद्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रमों के निम्नलिखित कार्यालयों को, जिनके 80 या अधिक प्रतिशत कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

1. भारत पेट्रोलियम कार्पोरेशन लिमिटेड

- (i) भारत पेट्रोलियम कार्पोरेशन लिमिटेड, क्षेत्रीय कार्यालय कोलकाता, भारत भवन, प्रिंस गुलाम मुहम्मद शाह रोड, कोलकाता-700095
- (ii) भारत पेट्रोलियम कार्पोरेशन लि० सिवरी संस्थापन, सिवरी फोर्ट रोड, सिवरी (पूर्व), मुंबई-400015
- (iii) भारत पेट्रोलियम कार्पोरेशन लि०, एलपीजी नाशिक, प्लॉट नं० एफ-5 मालेगांव एमआय डीसी क्षेत्र सिन्नर, सिन्नर/नाशिक-422113
- (iv) भारत पेट्रोलियम कार्पोरेशन लि०, कोयाली संस्थापन, पो० जवाहरनगर, वडोदरा

2. इंडियन स्ट्रेटिजिक पेट्रोलियम रिजर्व्स लि०

- (i) इंडियन स्ट्रेटिजिक पेट्रोलियम रिजर्व्स लि०, (ओआईडीबी की एक पूर्ण स्वामित्व वाली सहायक कंपनी) पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय, ओआईडीबी भवन, तीसरा तल, प्लॉट सं० 2, सेक्टर-73, नोएडा-201301 (उ०प्र०)

[सं०-11011/1/2015 (हिन्दी)]

डी० एस० रावत, संयुक्त निदेशक (राजभाषा)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 7th July, 2015

S.O. 1414.—In pursuance of sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Public Sector Undertakings under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more per cent of the staff have acquired working knowledge of Hindi:—

1. Bharat Petroleum Corporation Limited

- (i) Bharat Petroleum Corporation Limited,
Regional Office, Kolkata,
Bharat Bhawan,
Prince Gulam Mohammad Shah Road,
Kolkata-700095
- (ii) Bharat Petroleum Corporation Limited,
Siwari Installation, Siwari Fort Road,
Siwari (East) Mumbai-400015
- (iii) Bharat Petroleum Corporation Limited,
LPG Nashik,
Plot No. F-5, Maalegaoun MIDC,
Area-Sinaar,
Sinaar/Nashik-422113
- (iv) Bharat Petroleum Corporation Limited,
Koyali Installation,
PO. Jawaharnagar, Vadodara

2. Indian Strategic Petroleum Reserves Limited

- (i) Indian Strategic Petroleum Reserves Limited
(A wholly owned subsidiary of OI DB)
Ministry of Petroleum and Natural Gas,
OI DB Bhawan,
3rd Floor, Plot No. 2 Sector-73
Noida-201301 (U.P.)

[No. 11011/1/2015 (Hindi)]

D.S. RAWAT, Jt. Director(OL)

वस्त्र मंत्रालय

नई दिल्ली, 3 जुलाई, 2015

का.आ. 1415.—केन्द्रीय सरकार, (संघ के शासकीय प्रयोजनों के लिए) राजभाषा नियम, 1976 के नियम 10 के उपनियम, (4) के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालय को जिसके 80 से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

क्षेत्रीय निदेशक (उत्तरी क्षेत्र)
विकास आयुक्त (हस्तशिल्प) कार्यालय,
पश्चिमी खण्ड-8, रामाकृष्णपुरम,
नई दिल्ली-110066

[सं ई-11016/1/2015-हिंदी]

ए० मधुकुमार रेड्डी, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 3rd July, 2015

S.O. 1415.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for the official purpose of the Union) Rules, 1976, the Central Government, hereby notifies the following office of the Ministry of Textiles, more than 80% staff whereof have acquired working knowledge of Hindi.

Regional Director (NR),
Office of Development Commissioner (Handicrafts),
West Block-8, R.K. Puram,
New Delhi -110066

[No. E-11016/1/2015-Hindi]

A. MADHUKUMAR REDDY, Jt. Secy.

कोयला मंत्रालय

नई दिल्ली, 14 जुलाई, 2015

का.आ. 1416.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 20 मार्च, 2015 में जिसे भारत सरकार के कोयला मंत्रालय की अधिसूचना द्वारा का०आ० संख्यांक 805(अ) तारीख 19 मार्च, 2015 में प्रकाशित की गई थी, उक्त अधिसूचना से उपाबद्ध अनुसूची में वर्णित 410.47 हेक्टर (लगभग) या 1014.27 एकड़ (लगभग) माप वाली भूमि में (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए हैं;

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर, महाराष्ट्र (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन के लिये रजामंद है;

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 11 की उपधारा (1) द्वारा प्रदत्त

शक्तियों का प्रयोग करते हुए, यह निदेश देती है, कि 410.47 हेक्टर (लगभग) या 1014.27 एकड़ (लगभग) उक्त भूमि में या उस पर के सभी अधिकार केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, तारीख 20 मार्च, 2015 से निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त सरकारी कंपनी में निहित हो जाएंगे, अर्थात्—

1. सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

2. उक्त सरकारी कम्पनी द्वारा शर्त (1) के अधीन केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे;

3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

4. सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

5. सरकारी कंपनी, ऐसे निर्देशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा०सं० 43015/29/2012-पी आरआईडब्ल्यू-1]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL

New Delhi, the 14th July, 2015

S.O. 1416.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 805(E), dated the 19th March, 2015, published in the Gazette of India, Part II, Section, 3 Sub-section (ii), dated the 20th March, 2015, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land measuring 410.47 hectares (approximately) or 1014.27 acres (approximately) and the all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) are vested

absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas the Central Government is satisfied that the Western Coalfields Limited, Nagpur, Maharashtra (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Central Government hereby direct that the 410.47 hectares (approximately) or 1014.27 acres (approximately) and all rights in or over the said land so vested shall, with effect from 20th March, 2015, instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely:—

1. the Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;

2. a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the said Government Company under conditions (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the tribunal shall be borne by the said Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said land, so vested, shall be borne by the said Government Company;

3. the said Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said lands so vested.

4. the Government Company shall have no power to transfer the said land and the rights in or over the said land so vested to any other persons without the prior approval of the said Central Government; and

5. the Government Company shall abide by such direction and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary.

[F.No. 43015/29/2012-PRIW-I]
DOMINIC DUNG DUNG, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 6 जुलाई, 2015

का.आ. 1417.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट [संदर्भ संख्या 02 (c) of 2011] को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/07/2015 को प्राप्त हुआ था।

[सं. एल-12011/58/2009-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 6th July, 2015

S.O. 1417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 02 (C) of 2011] of the Indus. Tribunal-cum-Labour Court, Patna as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06/07/2015.

[No. L-12011/58/2009-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE**Before the Presiding Officer****Industrial Tribunal, Patna.**

Reference Case No.:—02 (C) of 2011

Between the Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, PATNA (BIHAR)-1 and Their workman represented by President, National Confederation of Bank Employees, C/O-Dubey Niwas, H.No.-18A New Yarpur Road, PATNA (BIHAR)-800001.

For the management : Shri Deepak Kumar Sinha,
Branch Manager,
State Bank of India, Birpur.

For the workman : Sri B. Prasad, General Secretary.
Bank Employees Federation, Bihar.

Present : Bipin Dutta Pathak.
Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, dated the 20th March, 2015

By notification order No.-L-12011/58/2009-IR(B-I) New Delhi, dated-27.01.2011 Govt. of India, Bharat Sarkar, Ministry of Labour, Shram Mantralya, New Delhi referred

under clause (d) of sub-section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter to be referred to as "the Act") the following dispute between The Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, PATNA (BIHAR)-1 and Their workman represented by President, National Confederation of Bank Employees, C/O-Dubey Niwas, H.No.-18A New Yarpur Road, PATNA (BIHAR) - 800001 for adjudication to the Industrial Tribunal, Patna.

SCHEDULE

"Whether the action of the management of SBI, Patna in treating the date of confirmation as 14.03.1988 and instead of 20.11.1984 in respect Shri Ram Prasad Saha, Ex-Security Guard who was retired on 31.12.1997 and denying him pensionary benefits, is legal and justified? If not, what relief the employee are entitled to?"

2. The case of the workman, in short, in the written statement of claim filed on behalf of the workman stating is that an Industrial Dispute for adopting unfair labour practice and refusal to give pensionary benefits to Shri Ram Prasad Saha, (delinquent workman), Ex-Security guard and Birpur Branch of State Bank of India has been raised on 15.04.2009 before the Assistant Labour Commissioner (C) cum-conciliation officer, which subsequently referred for adjudication to this Industrial Tribunal. The reference deals with the action of the management of SBI, Patna in treating the date of confirmations as 14.03.1988 instead of 20.11.1984 of Shri Ram Prasad Saha and denying from pensionary benefits shows any justification or not.

Workman was appointed as permanent security guard against sanctioned post and vacancy in the Birpur Branch of the bank on 14.03.1984 and worked on the same post without any break in service continuously till his superannuation on 31.12.1997. But the management of the bank refused to give pensionary benefits to the applicant on the guard that he was confirmed in service on 14.03.1988 and as such he was not entitled for the same. Workman had worked continuously without any break in service against a permanent post. Association of the workman is an affiliate of National confederation of Bank a Employees (in short N.C.B.E.) which is a major signatory of the Bipartite Settlement in banking industry.

The workman served in the Army as sepoy (Shipahi) and joined the service of State Bank of India as security guard of Birpur Branch of S.B.I. vide letter No.: RM-11/939 dated 14.03.1984. The post of security guard was a permanent post and on which one Mr. S.B. Limboo was posted, who was on long leave on Medical ground on account of illness, died soon after the workman joined the post of security guard. The workman continued to work against the permanent vacancy caused due to death of Sri Limboo and he worked without any break in service and

superannuated from the service w.e.f. 31.12.1997. The management of the bank for all practical purposes treated him as permanent employee. Workman was asked to produce satisfactory medical certificate before his appointment. Bank provided him "fire Arm" to perform duties of security guard w.e.f. 20.03.1984. He was made retainer of the bank's licence gun. He was deputed to training along with gun at Ranchi and Patna training centres.

Paragraph 493 of "Shastri Award" provides that for a permanent appointment the candidate must produce satisfactory medical certificate for medically fit before the appointment. Only permanent security guard is provided with "gun" of the bank to perform official duties. Only a permanent employees is made retrainor of the gun of S.B.I. and is deputed for training at staff training centres. Employers deputed the workman to staff training centres Ranchi with the gun of the bank from 21.08.1986 to 23.08.1986. He was also deputed for training with gun at staff training Patna from 15.06.1987 to 17.06.1987.

Paragraph No.- 508 of Shastri Award provides that temporary employee means an employee who has been appointed for a limited period for work i.e. 90 days. Mr. Saha was never appointed for a limited period. He was entrusted with the responsibilities of a permanent security guard. But no formal letter of absorpition/confirmation was issued despite several representation made by the workman which was duly recommended by the concerned branch. Workman was absorbed in the permanent cadre vide letter no. RM-II/21/7198/139 dated 10/14.09.1987. He was superannuated from service while working at sone-deep branch on 31.12.1997, and he applied for grant of pension as the bank arbitrarily did not grant him pensionary benefits. Workman filed representation for pensionary benefits treating him as permanent employees of the bank w.e.f. 20.03.1984 in pursuant to letter of appointment. His claim was duly recommended by the concerned branch as well as by the Dy. General Manager, Zonal Office, Purnea, vide his letter No.- PER/PU/Ho/2004 dated- 29.01.2004. In reference for query made by the Head Office of the bank, further clarification were given by the D.G.M., Zonal office, Purnea vide his letter No.- PER/PU/HO/579 dated- 27.06.2005.

Shri Bishwanath Mahto was confirmed in service with retrospective effective from 10.09.1987 vide letter No.-RM-II.21/382/11 dated-13.02.1988 and his case was similar to that of Shri B.N. Mahto and required consideration in the same light but it was turned down without assigning any reason how his case was different than that of Shri B.N. Mahto. Order was passed by the bank if arbitrarily and without consideration the claim of the employee. No reason has been assigned distinguishing the case of Shri B.N. Mahto. The action of the bank is discrimination and unfair labour practice. A letter No.- R.M.III dated-14.03.1984 (Annexure-I of the W.S. of claim of the workman) is letter of

appointment of Shri Ram Prasad Saha in which it has been written that Shri B.B. Limboo guard is availing medical leave, please engage Shri Ram Prasad Saha temporarily in place of Shri B.B. Limboo till further instructions. In this connection, please not that Shri Saha is in the panel of temporary employees prepared at our Balua Bazar Branch. Please advice them that you have engaged him temporarily in place of Shri Limboo.

Another letter annexed with written statement of claim is R.M.II/No.- 21/9107/126 dated-31.07.1986 (annexure-2). This letter is in respect of Refresher Training of Bank Guard from 21.08.1986 to 23.08.1986 of Shri Ram Prasad Saha bank guard in which is has been stated that guards must carry their gun and cartridges to the training centre.

Next letter No.- R.M.II/No.-21/12581/69 dated- 25.05.1987 (annexure-3) is also in respect of Refresher Training of Bank Guard of this workman from 15.06.1987 to 17.06.1987.

Another letter is R.M.II/7/198/139 dated-10th September, 1987 letter indicates that management had decided to absorb Sri Ram Prasad Saha, temporary bank guard in permanent cadre as guard-cum-messenger with immediate effect on 6 months probation provided he is otherwise found suitable after observing all formalities.

Next letter (annexure-5) with the written statement of claim is No.-PER/PU/HO/2004 dated- 29.01.1004. This letter was sent by Dy. General Manager to Zonal Office, Purnea. This letter is respect of letter dt-08.11.2002 of the Joint Secretary, SBI Pensioner's Association regarding the shifting of date of confirmation of Shri Ram Prasad Saha. Dy. General Manager has stated that Shri Saha was posted at Birpur Branch as a temporary guard vide letter No.- AGM-II/22/77 dated- 14.03.1984. He was joined on 20.03.1984. He absorbed in permanent capacity as Bank Guard-cum-messenger and was palced on 6 months probation from 14.09.1987. He attended training programme with gun at STC, Patna from 15.06.1987 to 17.06.1987. He deputed to STC Ranchi with fun from 21.08.1986 to 23.08.1986 i.e. much before the date of his permanent absorpition. Further it has been stated para-4 "in view of what have been stated in the proceeding paragraphs we are of to opinion that though Shri Saha was not confirmed on the Schedule date, he was allowed to perform his duties with gun and he had attended the training programmes along with his gun. This implies that he was treated as a full-fledged permanent employee of the bank, through, he was not advised in time. This reflects an inadvertent error of omission on the part of the Bank, which could be condoned by treating Shri Saha was a confirmed guard from the due date i.e. from 20.09.1094. We therefore, recommend that Shri Saha's representation for considering his case may be acceded to sympathetically so that the is rendered eligible for receiving person from the Bank from the retrospective date i.e. from 01.01.1998."

Another letter Annexure-6 has been also sent by Dy. General Manager, please refer to you letter No.- PER CBK 5178 1801 dated- 15.02.2005, which bears a reference to our letter No.- PER PU HO 2004 dated-29.01.2004.

In this connection, we advice in seriatina as under:—

- (1) Shri Saha joined the bank as band guard (temporary) at Birpur branch on 20.03.1984 as per the branch letter No.- 21107 datd-06.08.1985 addressed to RM-II Z.O. Purnea (copy enclosed for year ready reference) Shri Saha's name was included in the temporary employees panel prepared at our Balua Bazar Branch, in terms of then RM-III's letter No.- 93923 dt- 14.03.1984 (copy enclosed). It is therefore, presumed that the mentioned as 16.07.1979 in his service sheet relates to the date prior to the preparation of the panel.
- (2) Shri Saha's scheduled date of confirmation would accordingly, be 20.09.1984 *i.e.* after 5 months from the date of joining.
- (3) Another guard, Shri Biswanath Mahata, was also appointed as temporary basis on 06.12.1980 as per Balua Bazar branch letter No.- 2127 dt- 10.03.1983 (copy enclosed).

Another letter Annexure-7 is dt.1st January, 1988 (annexure-7) of Written statement of claim indicates that one B.N. Mahto was confirmed in his present appointment w.e.f. 10.09.1987.

Last leter Annexure-8 with the written statement of claim is letter sent to office the Dy. General Manager, SBI, Zonal Office, Purnea stating therein that “an employee cannot be made permanent in a post from a retrospective date when the appointment letter specifies the date of probation and confirmation. The period spent by an employees as a temporary appointee does not make it obligatory for the Bank of regularize an employee's service retrospectively in order to grant him pension.”

3. Written statement cum rejoinder on behalf of the bank (Management) to claim statement of Shri Ram Prasad Saha, Ex-security guard has been filed. In which it has been submitted that u/s 2(g) (i) of Industrial Disputes (Central Rules) provides that a in relation to an industry carried on by or under the authority of the Central Government, the office-in-charge of the concerned established shall be employer. At the industrial dispute is between Shri Ram Prasad Saha and Birpur Branch of SBI from where he retired. The name of the Chief General Manager be expunged and the name of the Birpur Branch SBI be substituted. Competency of raising the dispute and also representation of the workman through Shri Tej Narayan Debey said to be President of National Federation of Bank Employees (Birpur State) is also seriously disputed.

Cause of action arose when he was confirmed on 14.03.1998 but no dispute was raised either at that point of time or within a reasonable period thereafter. Workman retired from service on 31.12.1997 and received all his retiral benefits but even then nothing was done. He filed C.W.J.C. No.-800 of 2007 which was disposed of by an order passed by the Hon'ble High Court on 23.01.2009. It is therefore, it is the case of no action by the workman for a long period. Shri Saha was absorbed in permanent cadre on 6 months probation on 14.09.1987 and was confirmed in service after sixe month w.e.f. 14.03.1988. His age as on the date of confirmation was 50 years 03 months and 06 days. Central Board of the State Bank of India under clause (o) of the subs-section (2) of Section 50 of the State Bank of India Act, 1955 had framed "State Bank of India Employees Pension Fund Rule." Rule 07 read with 8 provides that no employee shall be eligible to become a member of the pension fund if he is more than 38 years of the age (subsequently increased to 48 years w.e.f. 01.11.1993 on the date of confirmation. Shri Saha age on the date of confirmation was 50 years, 03 months and 06 days, he was not made a member of the Pension Fund and accordingly not entitled to get pension. Submission that Shri Saha had worked for 240 days as alleged; it does not entitled him to be a permanent employee. Letter of initial appointment was in temporary capacity. Shri Saha temporary guard, was in the panel of temporary employees. The Branch Manager is advised to inform Shri Saha that he had been engaged temporarily in place of Shri Limboo. Shri Saha was put in permanent cadre on 14.09.1987.

The Regional Manager *vide* letter -14.03.1984 intimated to engaged Shri saha temporarily plalce of Shri S.B. Limboo till further instruction as Shri Limboo was availing sick leave and the branch was running unguarded and he was appointed by the bank on 20.11.1984 and was posted at Birpur Branch. Temporary engagement was never objected. He was deputed of refreshing training to "staff training centre Ranchi and again at Patna do not speak that he was treated or made permanent. This also does not show that such training is given to permanent security guard and not temporary guard. A person cannot be deemed to be confirmed unless it is done and informed in writing and there is no rule and/or any judicial pronouncement holding that continuous working of 240 days will be automatically make a temporary employee confirmed. Shri Saha is not entitled to any relief. Other settlement of the workman has been denied.

4. Rejoinder on behalf of the workman to written statement of the workman have also been filed stating theirin that written statement of the bank is incorrect and misleading.

5. Two witnesses has been examined on behalf of the workman W.W-1 Shri Ram Prasad Saha and W.W-2 Shri Deota Singh one affidavit was filed on behalf of Ram

Prasad Saha on 31.05.2011 and affidavit of Deota Singh was also filed on the same date. Copies of both deposition on affidavit was not served to the other sides and both witnesses were not cross-examination at that time. Again on 19.07.2012 deposition on affidavit in Hindi was filed on behalf of the both the witnesses.

W.W.-1 Ram Prasad Saha has stated in his affidavit dated-16.07.2012 that he is Ex-serviceman and he was appointed as guard on temporary basis on 16.07.1979 at Balua Bazar Branch. On 14.03.1984 vide letter No.-RM III-939/23 he was deputed at Birpur branch as bank guard and he joined there on 20.03.1984. He has stated that letter was issued by from Regional Office, Bhagalpur of bank of India by Regional Manager be marked as Ext.-W/1. He worked regularly since 20.03.1984 without break in service but by mistake of bank he was not made permanent in time. Bank guard Sri S.B. Limboo was on permanent basis and he was on long leave due to illness. This witness joined as bank guard on 20.03.1984 and since thereafter, Sri S.B. Limboo died. This witness worked from 31.12.1997. After the death of Sri Limboo from August 1984 process started for permanent appointment and name was called from local employment exchange and interview was taken and this witness was selected. He was asked to deposit fitness certificate of Doctor. No formal information was given to him from bank as such this witness felt that he has been selected permanently. No appointment letter at temporary guard was given to him. Bank never informed about the letter dt. 19.09.1987 for permanent appointment so this witness thought himself that after selection he has been made permanent in the year 1984. Fire gun was given to this witness from 20.03.1984 for bank duty. He was made retainer of licence of gun in the year 1984 and this witness also deposited fitness certificate in the year 1984. He was sent for training in staff training of the bank from 31/04.07.1986 and 25.05.1997 at Ranchi and Patna respectively. Prior to probation he was sent for training. He has proof the letters for training marked as Ext.-W/2 and Ext. W/3. During 1984 he worked for more than 240 days in one calendar year. Bank included his name in the category of protected employee. He applied in the year 1984 for appointment as permanent employee. Even after completion of service of 240 days employees union informed the bank for permanent appointment. He was appointed on probation from 14.09.1987 for bank guard cum-messenger vide letter No.- RM II/G/7198/139 dt.-10/14.09.1987. He without interruption worked at Birpur branch from 20.03.1984 to 14.03.1988 and after four year he was made permanent. Bank deprived him from benefits of pension. Letter No.-RM II/G/7198/139 dt.-10/14.09.1987 has been marked as Ext.-W/4.

Dy. General Manager, Purnea of Regional Office sent letter to local head office, Patna vide letter No. - PER/PU/HO/2004 and PER/PU/HO/579 dated- 29.01.2004 and 27.06.2005 recommending to make permanent to consider

this witness as permanent employee from 20.09.1984 so that this witness may get benefits of pension. This letter has been marked as Ext.-W/5 and Ext.-W/6 respectively.

On Sri B.N. Mahto, bank guard was appointed at Balua Bazar branch was confirmed as permanent employee from beginning. This letter has been marked as Ext.-W/7. Head Office, Patna vide letter No.- HR/CBK/682/253 dt-22.05.2006 returned back the recommendation of Dy. General Manager, State Bank of India at Purnea this letter has been marked as Ext.-W/8. He has been discriminated.

In cross-examination this witness has stated that he has not filed his joining letter from 16.07.1979 from Balua Bazar branch. This witness denied that he was appointed temporarily due to long leave of Sri S.B. Limboo due to illness. This witness was appointed permanently so he did not made protest. This witness has no knowledge that after death of Sri Limboo bank, sent letter that his service became permanent. This witness has got no list that he was employee of reserved categories. He has got no letter that on the basis of 240 working days, he was made permanent.

7. W.W-2 Deota Singh stated that he was appointed on permanent basis on 23.10.1959 as Assistant and he was posted at Purnea Branch. He was Dy. General Secretary of Bhartiya State Bank Union, Patna circle. He further stated that Ex-serviceman Ram Prasad Saha was empanelled on temporary post for Balua Bazar Branch in 1979. In the year 1983 he was empanelled in the month of December for the permanent post at ADB, Dumdaha Branch. Ram Prasad Saha was appointed on 14.03.1984 on temporary post in place of Sri S.B. Limboo. Post was permanent and sanctioned. Sri Limboo died due to illness in the year 1984, immediate after joining the post by Ram Prasad Saha. Ram Prasad Saha without break in service remain in the same post of Sri Limboo till 14.03.1988. He retired on 31.12.1997. Ram Prasad Saha is permanent employee from the date he joined at Birpur Branch and it appears from the fact that from 20.03.1984 bank provided him gun which is given to permanent employee and Bank made him retainer of gun in the year 1984 which is given to only permanent employee. He was sent for training at Ranchi and Patna with gun which is permitted to permanent employee and Ram Prasad Saha was directed to submit fitness certificate which was submitted by him. He has worked for 240 days so his name was included in the category of protected employee. Union also informed bank to absorb to Ram Prasad Saha permanent from 1984. Even Dy. General Manager has recommended for consideration of Sri Saha as permanent employee from 20.09.1984. Sri Saha was made permanent on 14.03.1988 which is against the rule, Shastri award and settlement. Even one employee Sri Viswanath Mahto was confirmed from beginning date.

In cross-examination this witness stated that pension is given to those employee who remains his service for

10 years. This witness was confirmed six months after the appointment. Union made protest that temporary employee who worked at permanent post, be empanelled and Ram Prasad Saha was empanelled permanently in the year 1983. Arm is given to permanent employee.

8. Ten documents has been exhibited on behalf of the workman. Ext.-W/1 is letter No. R.M-III 939/23 dt. 14th March, 1984 by Regional Manager intimating that Sri S.B. Limboo guard at your branch is availing on sick leave and your branch is running unguarded. Engage Sri Ram Prasad Saha temporarily in place of Shri S.B. Limboo, till further instruction. He has also been stated that Sri Saha is in panel of temporary employee prepared at our Balua Bazar Branch. It appears that even prior to 14th March, 1984 Sri Saha was in the panel of temporary employee.

Ext.-W/2 is letter No. R.M II/No. 21/9107/126 dated 31.07.1986 which is in subject matter of refresher training of Bank guard and Sri Saha was sent for training from 21.08.1986 to 23.08.1986 and it has been stated that guard must carry their gun and cartridges and in proper uniform.

Ext.-W/3 is letter No. R.M II/ No. 212581/69 dated 25.05.1987 is also the similar letter like Ext.-W/2 for refresher training of bank guard with gun.

Ext.-W/4 is letter No. R.M. II/No. 21/7198/139 dt. 10/14.09.1987 sent by Regional Manager to absorb Sir Ram Prasad Saha, temporary bank guard in permanent cadre as Guard-cum-Messenger with immediate effect on 6th months probation provided he is otherwise found suitable.

Ext.-W/5 is the letter No. PER/PU/HO/2004 dated 29.01.2004 by Dy. General Manager to Zonal Office, Purnea in regard to shifting of date of confirmation of Shri Ram Prasad Saha (Retired Bank Guard). In which it has been stated that Saha has worked as a temporary guard before being posted at Birpur Branch on 20.03.1984. He was confirmed in his service on 14.03.1988. He was deputed to training centre for training on two occasions. The request was made from association to treat to Shri Sahas confirmation at an earlier date as was done in case of Shri B.N. Mahto. Bank Guard appointed with him at another branch *i.e.* Balua Bazar Branch. The observation of Dy. General Manager was that Sri Saha was posted at Birpur Branch as temporary guard, he joined on 20.03.1984. He was absorbed in permanent capacity as bank Guard-cum-Messenger and was placed on 6 months probation from 14.09.1987. He attended the training programme with gun at STC, as permanent employee from 15.06.1987 to 17.06.1987 and even from 21.08.1986 to 23.08.1986 much before the date of his permanent absorption. Shri Saha was allowed to perform his duties with gun and he has attended the training programmes along with gun. This implies that he was treated as a full-fledged permanent employee of the bank; though he was not advised in time. This reflects an inadvertent error of omission on the part of the bank which

could be condoned by treating Shri Saha as a confirmed guard from the due date from 20.09.1984.

Ext.-W/6- is letter No.- PER/PU/HO-579 dt. 27.06.2005 sent by Dy. General Manager in which it has been stated that Shri Saha joined the Bank as Bank Guard (temporary) at Birpur Branch. His name was included in the temporary employee panel at our Balua Bazar Branch. Shri Sahas scheduled date of confirmation would accordingly be 20.09.1984 *i.e.* after 6 months from the date of joining. Another guard, is Shri Viswanath Mahato was also appointed as temporary basis on 06.12.1980 and it has been stated that Sahas representation for considering his case may be acceded so that he is rendered eligible for receiving pension from the bank from the retrospective date *i.e.* from 01.01.1998.

Ext.-W/7 is in respect of Shri B.N. Mahto Guard-cum-Messenger, who was confirmed with effect from 10.09.1987.

Ext.-W/8 is dt 22nd May, 2006 sent by Circle Development Officer to Dy. General Manager in which it has been stated that an employee can't made permanent in a post from retrospective date when the appointment letter specifies the date of probation and confirmation. Ext.-W/8 is the letter sent to Dy. General Manager.

9. One witness M.W-1 namely Deepak Kumar Sinha was examined on behalf of the management he is Branch Manager at Birpur Branch of State Bank of India he knows Ram Prasad Saha on the basis of documents available in the bank. It has been stated that by him that dispute has been raised belatedly. Dispute for his confirmation arose on 14.03.1988 the date of confirmation but at that time no dispute was raised. He has knowledge about the pension rule of the bank. He was acquainted that he will retire and how much confirmed service period is considered for pensionable service. Even on 14.03.1988 as per rules he was not entitled to get pension. When he retired on 31.12.1997 then he was not entitled to get pension because he has not completed pensionable service. He was appointed temporarily in place of Sri Limboo on 14.03.1984 because Sri Limboo was on leave due to illness. This temporary appointment was for the period till further order. He was sent to staff centre Ranchi at the time of training and even thereafter his appointment was as temporary guard and his service was not confirmed. *Vide* letter dt. 10.09.1987 bank has directed to appoint in permanent cadre as Guard-cum-Messenger of probation for the period of 6 month. After completion of 6 month of probation he was confirmed on 14.03.1988. Prior to 14.03.1988 he was working as guard on temporary basis. After completion of period of probation his service was confirmed from the date 14.03.1988 and age on 14.03.1988 was 50 years 03 months 06 days. His date of birth was 08.12.1937. Bank has got State Bank Employees Pension Fund Rules and on the basis of rules pension is fixed. The person who is aged

48 years or more on date of confirmation will not be entitled to get pension. That provision has not been denied by the workman in his written statement. Pension rules is effective all over in State Bank and its employees. It is wrong to say that employee who works regularly for 240 days will be confirmed automatically. It has been stated in the letter dt.14.03.1984 it has been clearly written that appointment was made temporarily and he never made protest to be an temporary employee. No dispute was raised for date of confirmation and date of birth. There is no rule that only permanent employee is sent for training. Branch Manager or any officer has no power to recommend for confirmation and it is legally not valid. Regional Manager was appointing authority of the workman. It was beyond jurisdiction for Dy. General Manager to recommend for confirmation. No appeal has been filed against confirmation order. He accepted date of confirmation and after considering the claim of workman was rejected legally. Workman receive retirement benefit without protest.

In cross-examination this witness stated that he knows the workman on the basis of documents. He has no personnel knowledge about him. Further he stated that there is provision to send even temporary employee for training. Service of Sri Saha was without break from 14.03.1984 to 14.03.1988. There is no provision to confirm temporary employee as permanent employee. But after six month permanent employee is fully appointed permanently. Circular of Chief Regional Manager, Bhagalpur bearing No. 1108/1984 (Ext.-W/1) is not all India circular. In this circular there are some direction on the basis of other circular and the direction given in this circular may be direction for the workman of that time.

This witness have no knowledge when Shri Limboo died and how died the post of Sri Limboo was permanent. Appointment of Sri Saha was accordingly to process of 1984. Earlier permanent and temporary appointment was made. Even at the time part time appointment was made but since long there is no appointment and now temporary appointment is not made. This witness has no knowledge of about the period to make temporary employee as permanent and this witness has no knowledge that guard Sri B.N. Mahto was confirmed. This witness have no knowledge that name of Sri Saha was in protected employee. This witness has also no knowledge that Sri Saha has applied to make him permanent after inclusion of his name of protected categories of employees. This witness has no knowledge that employee union have demanded to confirm Mr. Saha. He further stated that is not possible for him to give entire knowledge for employment process.

10. Six documents has been filed on behalf of the management. Ext.-M/1 is letter No. R.M. III. No. 939/23 dt.14th March, 1984 by which Sri Saha was engaged temporarily in place of Sri S.B.Limboo who was on sick leave till further instruction. It has also been stated that Sri

Saha in the panel of temporary employees prepared at Balua Bazar Branch.

Ext.-M/2 indicates that it was decided to absorb of Sri Ram Prasad Saha, temporary bank guard in permanent cadre as Guard-cum-Messenger with immediate effect on 06 months probation. This letter No. R.M. II/No.-7198/139 dt. 10th September, 1987.

Ext.-M/3 is letter No. HR/CBK/682/253 dt. 22nd May 2006 sent by Circle Development officer to Dy. General Manager, Stating therein the an employee can not be made permanent in a post from a retrospective date when the appointment letter specifies the date of probation and confirmation. The period spent by an employee as a temporary appointee does not made it obligatory for the bank to regularize an employees service retrospectively in order to grant him pension.

Ext.-M/4 is order passed by the Hon'ble High Court in CWJC No. 800 of 2007. Ram Prasad Saha was the petitioner. In this case, it has been stated that these question can be only be settled in a proceeding duly constituted in terms of Industrial Dispute Act, who may take appropriate action for quantification of his entitlement and writ petition was disposed of.

Ext.-M/5 is letter dt. 19.09.1987 sent to Sri Ram Prasad Saha by Branch Manager by which it has been stated that it has been decided to absorb him in permanent cadre as Guard-cum-Messenger with immediate effect on 6 month probation provided you are otherwise found suitable, after observing all formalities.

Ext.-M/6- is the letter No. R.M. II/No.7198/139 dt.10th September, 1987 stating that it has been decided to absorb Shri Ram Prasad Saha, temporary bank guard in permanent cadre as Guard-cum-Messenger with immediate effect on 6 month probation he is otherwise found suitable, after observing all formalities.

11. The written argument has been filed on behalf of the State Bank of India stating therein that terms of reference is "Whether the action of the management of SBI, Patna in treating the date of confirmation as 14.03.1988 and instead of 20.11.1984 in respect of Shri Ram Prasad Saha, Ex-security Guard who has retired on 31.12.1997 and denying him pensionary benefit is legal and justified? If not, what relief the employees are entitled to?" It has been stated that Shri Saha was confirmed in service on 14.03.1988 and retired on 31.12.1997. Shri Saha at the time of retirement, denied pension on the ground that his absorption in the Bank's service was done at the age of 49 years and 9 month (his date of birth was 08.12.1937) and till 01.11.1998 upper age limit of pension funds was 48 years.

Purnea zone vide letter No.-PER/PU/HO/2004 dated-19.01.2004 and PER/PU/HO/579 dated 27.06.2005 sent their recommendations to the Head office for confirmation of

Shri Saha's service in the Bank from retrospective date so that he can become eligible for receiving pension. Competent authority turned down the recommendations *vide* their letter No.-HR/CBK/682/253 dated-22.05.2006 on the ground that an employee can't be made permanent in a post from a retrospective date when the appointment letter clearly specifies that date of probation and confirmation. Further submission has been made:-

Central Board of the State Bank of India under clause (o) of the sub-section 2 of Section-50 of the State Bank of India Act, 1955 has framed "State Bank of India Employees Pension Fund Rules". Rule-7 of pension fund rules provides that any employee shall be eligible to become a member of the pension fund if he is not more than 38 years of age (subsequently increased to 48 years *w.e.f.* 01.11.1993) on the date of confirmation. Shri Saha's age on the date of his confirmation was 50 years 03 month and 06 days, and he is not entitled to get pension. It has also been stated that claim of Shri Saha's is not only state but is also hit by the principles of estoppels. Clause 20.7 of the Bipartite Settlement dated 19.10.1966 is not applicable to State Bank of India. Memorandum of Settlement dated-31st October, 1979 clearly specific in para-IV of the terms of settlement that in respect of State Bank of India, the provisions of the Sastry Award and Desai Award as modified by the MoS dated 31.03.1967, 24.02.1970 and 15.09.1970 shall govern the service conditions of the workman except to the extent that the same are modified by this settlement.

12. Written argument of the workman is that workman was temporarily appointed as Armed Guard at Balua Bazar Branch of State Bank of India. *w.e.f.* 16.07.1979. Thereafter, *vide* letter No.R.M.III No. 939/23, dated-14.03.1984 he was appointed as temporary Guard at Birpur Branch of S.B.I. where he joined on 20.03.1984. He worked from 20.03.1984 to 31.12.1997 uninterruptedly as Armed Guard. Instead of confirming the services of the Armed Guard, after a lapse of six months of his service, he was confirmed *w.e.f.* 15.03.1988. workman was supplied Bank's gun and his name was entered as a retrainee of said gun *viz.* SBBLB/8-2423 *w.e.f.* 20.03.1984. He was supplied Bank's uniform and was asked to produce Medical Fitness Certificate at the time of reporting for duty on 20.03.1984. He submitted Medical Fitness Certificate. He was sent for training at Ranchi in the year 1986 and staff training centre Patna. Only permanent member of staff are supplied Bank's gun and are made retainers of the gun, and are supplied uniform and are imparted training in the bank's training centre and are required to submit Medical Fitness Certificate. Reliance has been placed on all the Exts. exhibited on behalf of the workman.

It has been submitted that by examination of W.W-1 and W.W-2 the claim of the workmen was substantiated. Management committed error for not confirming him after expiry of a period of 06 months *i.e.* after 20.09.1984.

Bipartite Settlement- "In suppression of paragraph 21.20 and Sub-clause (C) of paragraph-23.15 of Desai Award"

"Temporary Employee" will mean a workman who has been appointed for a limited period for work which is of an essentially temporary nature or who is employed temporarily as an additional workman in connection with a temporary increase in work of a permanent nature and includes a workman other than permanent workman who is appointed in a temporary vacancy caused by the absence or a particular permanent workman.

Para-8 of Ist Bipartite Settlement records as under. "A temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a period of three months during which the Bank shall make arrangement for filling up the vacancy permanently. If such a temporary workman is eventually selected for filling up the vacancy, the period of such temporary employment will be taken into account as part of his probationary period."

FINDINGS

13. Reliance has been made also Exts.- M/6 and workman also relied on the decision of Hon'ble Supreme Court of India H.S. Rajashekara Vs. State Bank of Mysore and Anr. In this case there was discrimination because one of the employee Shri Devaraju was absorbed and as permanent employee and there was discrimination in case of the petitioner. Who had worked more than 240 days in a calendar year. As such bank was directed to absorb the petitioner as permanent employee. This is clearly similar as the case of the petitioner because as per Ext.-W/7 one B.N. Mahto was confirmed *w.e.f.* 18.09.1987. Bank in its written statement have relied that Shri Shah's age on the date of confirmation was 50 years 03 months and 06 days, he could not become a member of pension fund and he is accordingly not entitled to get pension. State Bank of India Employees' Pension Fund Rules, Rule-7 of the said pension fund rules provides that any employee shall be eligible to become a member of pension fund put if he is not more than 38 years of age (subsequently increased to 48 years *w.e.f.* 1.11.1993).

14. In this contest it is pertinent that terms of reference- "Whether the action of the Management of SBI, Patna in treating the date of confirmation as 14.03.1988 and instead of 20.11.1984 in respect of Shri Ram Prasad Saha. Ex-Security Guard who has retired on 31.12.1997 and denying him pensionary benefits is legal and justified? If not, what relief the employee are entitled to?" Bank has admitted that regular bank guard was sick and branch is running unguarded. Therefore, Shri Saha's who was in the panel of temporary employee may be engaged temporary in place of Sri Limboo.

15. Shri Ram Prasad Saha has stated in his evidence that he was appointed as temporarily on 16.07.1979 at Balua Bazar Branch as guard. This fact has not been challenged though he had not filed that appointment letter. Thereafter, he was deputed as bank guard on 14.03.1984 and he joined on 20.03.1984 this fact is admitted by both the parties. Shri

S.B. Limboo died due to illness in the year 1984. Shri S.B. Limboo was permanent bank guard and after his death that post remained vacant. No interruption in service has been brought on record by the Bank. On the other hand Ram Prasad Saha in para-4 of the evidence has stated that in one calendar year he worked for more than 240 days. Ext.-W/1 it has been stated that Shri S.B. Limboo guard was availing sick leave and Regional Manager of the bank directed to engage Shri Ram Prasad Saha temporarily in place of Shri S.B. Limboo till further instruction. As such petitioner was engaged from 14.03.1984 and he was sent twice for training. In Ext.-W/2 and W/3 it has been stated that guards must carry their gun and cartridges to the training centre and must be proper uniform. Dy. General Manager *vide* letter Ext.-W/5 stated that request was made to treat Mr. Saha confirmation at an earlier date as was done in case of Shri B.N. Mahto Bank Guard appointed with him at another Branch *i.e.* Balua Bazar Branch. So bank can't discriminate Shri Ram Prasad Saha without any reason. *Vide* Ext.-W/6 Dy. General Manager had stated that Shri Saha schedule date of confirmation would accordingly be 20.09.1984 *i.e.* after 06 months from date of joining. So bank can't discriminate Shri Ram Prasad Saha and there is one decision of Hon'ble S.C. which support the case of Shri Ram Prasad Saha.

AWARD

16. As such action of the management of SBI, Patna in treating the date of confirmation as 14.03.1988 and instated of 20.11.1984 in respect of Shri Ram Prasad Saha, Ex-security Guard who has retired on 31.12.1997 and denying him pensionary benefits is not legal and justified.

When the action of the management (Bank) is not legal and justified and the date of confirmation should be 20.11.1984 in respect of Shri Ram Prasad Saha, Ex-Security Guard who has retired on 31.12.1997 and should be given pensionary benefit and other benefits of which he will be entitled to get because he will be entitled to be a member of SBI Employees Pension Fund Rules. In the result, it is held that Shri Ram Prasad Saha, Ex-security guard who had retired on 31.12.1997 will be given pensionary benefits and all their benefits, from the date of retirement. Management (Bank) is directed to pay all benefit including the pensionary benefit to the said workman. This award is effected after date of publication and gazette.

This is my award accordingly

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 6 जुलाई, 2015

का.आ. 1418.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण के

पंचाट (संदर्भ सं. 64/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2015 को प्राप्त हुआ था।

[सं० एल-12012/80/1995-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 6th July, 2015

S.O. 1418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 64/07) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06/07/2015.

[No. L-12012/80/1995-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/64/07

Shr Prakash Chand Raikwar,

S/o Shri Ganesh Prasad Raikwar,

Resident of Itwari Touri,

In front of Master Hari Ram,

Post Sagar,

Tehsil and Distt, Sagar (MP)

Workman

Versus

Branch Manager,

State Bank of India,

Gopal Ganj,

Sagar (MP)

Management

AWARD

Passed on this 5th day of June, 2015

1. As per letter dated 16-7-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/80/1995-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of the State Bank of India, Sagar (MP) in terminating the services of Shri Prakash Chand Raikwar S/o Shri Ganesh Prasad Raikwar w.e.f. 23-8-2004 (corrected as 23-8-1994 *vide* Ministry's corrigendum dated 9-9-2014) is justified? If not, to what relief the workman concerned is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/5. Case of workman is that he was working as messenger in Gopalganj Branch, Distt. Sagar from 1-7-74 to 4-7-94. He was paid wages by cheque. Workman was called for interview on 7-10-92, he was interviewed on 5-11-92 at Gwalior. His wife Kanta bai had written letter dated 4-7-95 to the General Manager. She had complained about less salary paid to workman and how she will manage family expenses. His wife and requested to increase salary of workman. IInd party annoyed by letters sent by his wife, dismissed workman from 4-7-94. He was not served with any chargesheet. No enquiry was conducted. He was not paid retrenchment compensation. Notice of termination was not issued to him. Workman reiterated that his services are terminated by IInd party after receiving letter from his wife. Workman prays for reinstatement with back wages.

3. IInd party filed Written Statement opposing claim of the workman. IInd party submits that workman was engaged on daily wages on temporary basis as casual labour. His engagement was as per exigencies. The details of his working are given in Para-1 of the written Statement. That workman was working less than 5 hours in a week. He was paid consolidated amount Rs. 190/- per month. Workman was again engaged during the period February, 1991 to October, 1993. Workman was not continuously working. During July, 1979 to November, 1989, workman worked for total 269 days. Workman had not completed 240 days continuous service preceding 12 months of his non-engagement. IInd party has raised objection that as per order of reference, termination of workman is shown 23-8-04. As per his own pleadings, workman was not working after 23-8-94, the reference is not tenable. It is reiterated that workman has not completed 240 days continuous service preceding alleged termination of workman. There was no question of issuing chargesheet or conducting enquiry. It is denied that workman is terminated by management for being annoyed by letters sent by his wife. Workman was not continuously working from 1974 to 1974. Workman is not entitled to any reliefs.

4. Ist party workman filed rejoinder reiterating his contentions in statement of claim. That workman was rendering continuous service more than 240 days during each of the calendar year. Non-engagement of workman is retrenchment under Section 2(oo) (bb) of ID Act.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the In affirmative management of the State Bank of India, Sagar (MP) in terminating the services of Shri Prakash Chand Raikwar S/o Shri Ganesh Prasad Raikwar w.e.f. 23-8-94 is justified?

(ii) If not, what relief the workman is As per final entitled to?" order.

REASONS

Workman is challenging termination of his services for violation of Section 25-F of ID Act. IInd party submits that workman was not continuously working. He was engaged on daily wages as per exigencies. His discontinuation does not amount to retrenchment.

7. Workman filed affidavit of his evidence supporting his contentions in statement of claim. That he was working as messenger in Gopalganj branch from 1-7-75 to 4-7-94. He was working continuously as messenger. He was called for interview as per letter dated 7-10-92. That one Raju Rikwar and Ramcharan Raikwar working with him from 1979 on daily wages were regularized. That he completed 240 days continuous service during each of the year. In his cross, workman says he worked in Gopalganj, civil line branch, Tatavani branch, MRC and Thana branch during the period February, 75 to 1994. The certificated about his working are produced. He was working as messenger, appointment letter was not issued to him. He was paid Rs. 190/- per month. Subsequently he was paid Rs. 12/- per day. He did not recollect whether he was paid Rs. 12/- per day from 1989 onwards. He was filling water, distributing letters and also did cleaning work. He was doing work of distribution of letters in 1994. His wife had written letter for increasing his salary. He produced all certificates about his working on record. The document produced by workman Exhibit W-1 is copy of Writ Petition filed No. 270/97. Said Writ Petition was decided on 31-1-2007 after almost 10 years issuing direction to appropriate Government Thereafter the dispute was referred as per order dated 17-7-07-Exhibit W-4. The application submitted by workman for absorption is admitted by management counsel but its contents are not eligible. Exhibit W-3 is letter issued to workman calling for interview on 5-11-92. Exhibit W-4 is letter issued by ALC, Sagar. In Exhibit W-5(a), 15 working days of workman are shown in November, 1982. Exhibit W-5(b) 20 working days of workman are shown in 1989. In exhibit W-5(c), 6 working days of workman in August, 1989. In exhibit 5(d) shown 24 working days of workman during 27-7-89 to 26-8-89. In Exhibit W5(c) 4-working days in 1980 and 137 days in 1989

are shown the documents discussed above do not disclose that workman was continuously working.

8. The evidence of management's witness Premchand shows working days of workman in Para-2 of his affidavit. In Para-8 of his cross-examination, management witness says that during 1991 to 1993, workman was working as waterman. The documents related to said work was letter issued by Branch Manager. Management's witness was unable to tell whether workman worked till 3-7-94. Management's witness says that payment was made to workman till October 1993. The suggestion is denied by management's witness that additional work of waterman was extracted from workman. The application for production of documents was submitted by Ist party workman dated 8-11-90. Though IInd party received copy of the application, it failed to produce original Banker's cheque payment vouchers, attendance register relating to workman. When management's witness admits that workman was working as watchman, IInd party pleaded that workman was engaged as daily wage as per exigencies. Workman was called for interview, IInd party with hold material documents. Workman had produced some documents which corroborates about his working in the Bank. Record about his working maintained by IInd party is not produced. Therefore I do not find reason to disbelieve evidence of the workman.

9. Learned counsel for IInd party Shri Shrotri relies on ratio held in Case of Bhogpur Cooperative Sugar Mills Ltd *versus* Harmesh Kumar reported in 2006(13)-SSC 28. Their Lordship held Section 25-G, H have no application in case whether Section 2(o)(bb) is attracted. Their Lordship dealing with Section 10 and 25-G held compliance under Section 25-G without reference was only as to whether termination of service was justified.

The ratio cannot be applied to present case at hand as the evidence of workman corroborated by certain documents. IInd party has with held attendance register, muster roll of workman. The ratio held in the case cannot be beneficially applied. The evidence on record sufficiently prove that workman completed 240 days continuous service preceding 12 months of his termination. The non-engagement of workman without issuing notice or paying retrenchment compensation is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No. 1 in Negative.

10. Point No. 2-in view of my finding in Point No. 1, termination of workman is illegal, question arises whether workman is entitled for reinstatement with backwages. The documentary evidence produced on record shows

engagement of workman. Management's witness in his cross-examination admits that workman was working as waterman during 1991, 1993. Payment was made to workman in October 1993. Management has not produced documents' Attendance Register, muster roll despite applications submitted by workman. The evidence of workman that he was working in IInd party from 19-7-75 to 4-7-94 is not shattered. The evidence shows workman was intermittently engaged. Workman was not appointed as employee of the bank during all those years. Considering the facts of the case, reinstatement of workman would not be appropriate.

11. Learned counsel for workman Shri Pranay choubey relies on ratio held in Case of Harjinder Singh *versus* Punjab State Warehousing Corporation reported in 2010-Legal Eagle (SC)s. Their Lordship dealing with modification in Labour Courts award, Single Judge substituted the award or reinstatement of the appellant with compensation of Rs. 87582/- by assuming that the appellant was initially appointed without complying with the equality clause enriched in Articles 14 & 16 of the constitution of India and relevant regulations while doing so, learned single Judge failed to notice that in the reply filed on behalf of the corporation before the Labour Court, the appellant's claim for reinstatement with back wages was not resisted on the ground that his initial appointment was illegal or unconstitutional and that neither any evidence was produced nor any argument was advanced in that regard.

The facts of the present case are not comparable therefore ratio held in the case cannot be applied to case at hand.

12. Considering the workman was working in the IInd party Bank during 1975 to 1994, compensation Rs. 2 Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

In the result, award is passed as under:—

- (1) The action of the management of the State Bank of India, Sagar (MP) in terminating the services of Shri Prakash Chand Raikwar S/o Shri Ganesh Prasad Raikwar *w.e.f.* 23-8-04 is not legal and proper.
- (2) IInd party is directed to pay compensation Rs. 2 Lakhs (Two Lakhs) to the workman within 30 days from the date of publication of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 6 जुलाई, 2015

का.आ. 1419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट संदर्भ संख्या 03(C) of 2011 को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/07/2015 को प्राप्त हुआ था।

[सं एल-12025/01/2015-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 6th July, 2015

S.O. 1419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 03(C) of 2011 of the Industrial Tribunal-cum-Labour Court, Patna as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06/07/2015.

[No. L-12025/01/2015-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA

Industrial Dispute Case No.—03(C) of 2011

Between the management of Chief General Manager, State Bank of India. Local Head Office, West Gandhi Maidan, Patna-800001/The Asstt. General Manager, State Bank of India, Zonal Office Khanjarpur. At & P.O. Bhagalpur. Dist. Bhagalpur and their workman Sri Shashi Bhushan Prasad, S/o-Late Bhola Mandal, VIII.-Durgasthan Tilakpur, P.O. Tilakpur, P.S. Sultanganj, Dist. Bhagalpur, Bihar.

For the workman : Shri B. Prasad, General Secretary, Bank Employees Federation, Bihar.

For the management : Shri Ashok Kumar Sinha, Branch Manager, ADB, Ghogha, Bhagalpur.

Present : Bipin Dutta Pathak
Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, the 22nd June, 2015

This case has been filed u/s- 2A (1) & (2) of the Industrial Disputes (Amendment) Act, 2010. Over denial of

regularization of the services as a messenger/peon and wrongful termination from services of a temporary Messenger/Peon *w.e.f.* 06.03.2009 while working at State Bank of India, Agriculture Development Branch, Ghogha, Dist. Bhagalpur.

2. The statement of claim of workman Sri Shashi Bhushan Prasad is that he has raised an Industrial Dispute before Assistant Labour Commissioner (C), Patna against his termination from services of the bank *w.e.f.* 06.03.2009.

Dispute has been raised on 19.06.2009. Conciliation proceedings ended in failure on 27.08.2010. Dispute has been raised within stipulated period and that remained pending over an year with no solution. Workman preferred an application under the following terms:—

"Whether the action of the management of State Bank of India, Ghogha Branch in denying regularization of services of Shri Shashi Bhushan Prasad as a Messenger/Peon and terminating his services in violation of section-25F of the I.D. Act, is legal and justified? If not, what relief (S) the workman is entitled to?"

The facts of the case is that workman was appointed by the management of State Bank of India to discharge the duties of a messenger/peon *w.e.f.* 30.04.2000. He discharged his duties:—

- (i) Taking out Register from Almirah and placing the same on table/counters;
- (ii) Preparation and posting of mails to post office.
- (iii) Distribution of notices relating to loans/recovery etc to parties through peon's book.
- (iv) To accompany the Recovery Team during the course of recovery of loans;
- (v) To accompany the bank officers to Lok Adalat Camps;
- (vi) Filing of letter/circular and arrangement of stationary;
- (vii) Brining stationary article from the Branches/officers;
- (viii) Serving water, tea to the members of staff and customers;
- (ix) Other sundry jobs of a Messenger/Peons;

He used to work on 10 A.M. to 6 P.M. regularly and same times even beyond that as per requirement of the Bank. He was initially paid wages @Rs. 15/- per day which was raised to @ Rs. 25/-, Rs. 40/- and lastly Rs. 50/- per day. Payment was made through vouchers. He used to discharge all the duties as per the instruction of the Branch Manager and other superior officials of the Bank. He worked from 30.04.2000 to 06.03.2009. His services stand terminated. As usual he went to discharge of duties on the following day, he was stopped from working and was again informed of termination of his services from evening of 06.03.2009. He

was neither given any notice pay nor retrenchment compensation preceding his termination. He was paid his wages regularly from 30.04.2000 to 31.08.2008 and on 01.09.2008, he was instructed by the authority to take payment in different names to which he did not agree. He was not made payment of his wages from 01.09.2008 to 06.03.2009. His duties were perennial in nature. He used to perform some clerical duties as per instruction of the management from time to time. His duties were identical with other permanent staff of the Bank. The termination of the workmen is covered u/s-2(oo) of the I.D. Act, 1947. After termination he is facing starvation as he has no any alternative means of livelihood. Action of the management is not considering regularization but terminating the services of the workman is neither legal nor justified.

- (i) The management violated the mandatory provisions as contained in section-25F of the I.D. Act.
- (ii) Management being a public sector Bank and a 'State' within the meaning of Article 12 of the India Constitution resorted to unfair Labour Practice as per Schedule V of the I.D. Act.
- (iii) Management failed to follow the principle of 'Equal pay for Equal work' as per Article 39 (d) of the Indian Constitution.
- (iv) Management has violated section 25(H) of the I.D. Act.

Leter dt-25.11.2010 sent by Assistant Labour Commissioner (C), Patna to the Secretary, Govt. of India, Ministry of Labour, New Delhi indicates that conciliation proceeding ended in failure on 27.08.2010.

3. Written statement has been filed on behalf of the Bank (Management) stating therein application filed by the claimant u/s-2A (1) & (2) of the amended I.D. Act, 2010 is neither maintainable in law nor on fact. It is not a case where an Industrial Dispute has been referred under section 10(1) (d) of the I.D. Act, 1947 mentioning therein any term of reference. It has been stated that Shri Shashi Bhushan Prasad has filed the application under reply under section-2A (1) & (2) of the I.D. Act as amended by Act No. 24 of 2010. Bank in his regards raised certain preliminary question relating to the maintainability of the reference in the present form, but as it appears that no order rejecting the contentions rose by the Bank therein has been passed. The term of reference has been framed by the workman himself. Under the Industrial Dispute Act, it is only the appropriate government which is competent to frame the term of reference. Amendment does not seize or supersede the power of the appropriate government conferred under section 10 of the Act. The term of reference as framed by the workman is not only illegal but also contradictory. Section 2A (1) & (2) of the Industrial Disputes Act is confined to termination of service and not regularization in service. These two issue are quite different. If the complete term of reference is read as it cannot be an Industrial Dispute

under section 2(k) of the I.D. Act. Dispute raised by an individual for regularization is not an Industrial Dispute. Selection tests required for regularization in service are quite different and various factors are required to be considered which has no bearing with the termination of service. It is submitted both the issues cannot be decided in the same proceeding. The conciliation officer is a necessary party and the learned Tribunal should hear his views also as he has dealt with the dispute. The person has been filed a writ application before the Patna High Court bearing C.W.J.C No. :- 5287 of 2009 which was dismissed by order dated 27.04.2009 in which the Hon'ble High Court held the person concerned is a daily wager who holds no regular/Permanent post.

It has been further submitted that the concerned person was engaged as and when exigencies of work arose on daily basis and whenever work was taken from him, he was paid his wages as agreed between the parties. He has performed works in the SBI, ADB Ghogha, Bhagalpur as and when instruction was given by the Branch Manager. It is submitted that his claim that he had worked since 30.04.2000 till August, 2008 continuously, is totally baseless and denied. His claim that he had also worked 240 days in every calendar year in also incorrect.

The Bank has its own rules of recruitment for appointment of subordinate cadre staff satisfying the requirement of Article 14 and 16 of the Constitution of India. He was not issued any appointment letter even to work as temporary staff. His engagement was purely as a casual worker on daily wages engaged as and when required. Payment were made to him through petty cash which means payment against some expenses which are in petty nature and that cannot be termed as regular payment of wage or other benefit. He used to discharge his duties on the days he was engaged on the instruction of the Branch Manager. Such discharge of duties were of casual nature and it cannot be said to be permanent and / or perennial in nature to discharge regular duties. Regular appointments are made who work as regular staff of the Bank. Shri Shashi Bhushan Prasad was fully aware of the fact that the Bank has its own rules of recruitment and his casual engagement as daily wager as and when required, was not in compliance of the rules of recruitment of the Bank. During the whole period of his work as claimed by him never demanded for his regularization in service. It is only when he could not get any engagement from the Bank even as casual daily wager, he started demanding regularization. Neither any vacancy was advertised nor any requisition to the Employment Exchange was sent nor the Branch Manager had any power to appoint subordinate staff. His engagement was totally non-est. The Bank is legally bound to follow of the equality in compliance of Article 14 and 16 of that Constitution of India in the matter of appointment. Merely because a daily wager as such a temporary employee is continued for a long time he would not be entitled to absorbed in service or made permanent.

His claim that he had worked from 2000 to 2008 and that too continuously is wholly baseless. In this contest reference has been made about the decision of State of Karnataka Vs. Uma Devi [2004 (4) SCCI] has been mentioned. Other decision and also been mentioned and it has been hold that "the appointment made in total disregard to the constitutional scheme as also the recruitment rules framed by the employer, which is stated within the meaning of Article 12 of the Constitution of India, the recruitment would be illegal one." An illegal appointment cannot be legalized by taking recourse to regularization. Vide order dated-27.04.2009 in case of C.W.J.C. No.- 5287 of 2009 filed by the petitioner, the Hon'ble High Court has held that person concerned is a daily wager. As there is no provision in the Bank of regularization of a daily wager, the person concerned cannot be regularized. Engagement of Shri Shashi Bhushan Prasad as daily wager is illegal. He submitted that a school transfer certificate dated 26.07.2006 from Government High School. In that certificate his date of birth has been shown to be 31.03.1988. He has claimed that he has started working in the Bank from April, 2000. Therefore, in April 2000 he was merely a child of about 12 years. Engagement of a 12 years child in the Bank, even as casual daily wager, was nothing but an impossibility and illegal. Comment has been made about the statement made by the Shri Shashi Bhushan Prasad.

4. Rejoinder to the written statement of the Bank has been filed mainly stating that workman on worked for more than 240 days in 12 calendar months as per section-25B of the I.D. Act. The retrenchment has been covered u/s - 2 (oo) of the I.D. Act. Management violated the provision of section-25F of the I.D. Act. It is also been stated that the services of workman were utilised as a radice workman for over 8 years. He discharged the duties of a messenger from 30.04.2000 to 06.09.2000 uninterruptly.

5. Management of SBI has also filed a petition dated 03.05.2011 raising question of maintainability and further steps in the aforesaid case.

Mentioned objection has been raised that application was filed u/s 2A (1) and (2) of the I.D. Act which has been added vide Industrial Dispute (Amendment) Act, 2010. A Gazette notification which brought amendment in to force, has not been annexed with the application. In this contest when the amendment has been made then there is no need to file Gazette notification became amendment has already got statutory force. Other objection has been made that amendment Act is not enforceable unless Industrial Dispute (C) rules are accordingly amended or separate rules are framed. This petition has got no force itself and is accordingly rejected.

6. A petition dated-04.08.2014 was failed on behalf of the workman, Shashi Bhushan Prasad stating therein that dispute has been referred for adjudication by Ministry of Labour, Govt. of India, New Delhi vide order no.-L-12012/102/2010-IR (B-1) dated 26.05.2011 before the Hon'ble CGIT

No. - 1 Dhanbad. Workman was not in a position to bear the traveling expenses for attending the proceedings at Dhanbad, an I.D. Case was filed before the Hon'ble Industrial Tribunal, Patna as per the provisions of Section 2A (1) & (2) of the Industrial Dispute (Amendment) Act, 2010.

7. It is also appears that the dispute was referred for adjudication "Whether the action of the management of State Bank of India, Patna in terminating Shri Shashi Bhushan Prasad, S/O Shri Bhola Mandal from service with effect from 06.03.2009, is legal and justified? To what relief the workman is entitled?"

It appears that award was passed stating therein that on 30th November: 2011. Registered letter duly signed by Shashi Bhushan Prasad was received that the same case has been already filed before the Industrial Tribunal, Patna under the provision of section 2A (1) & (2) of Industrial Dispute (Amendment) Act, 2010. In the same has been registered as I.D. Case No.-3(C) of 2011 and the same is pending for the adjudication. In such circumstances he has prayed that he may be allowed to withdraw case before this tribunal. In view of such prayer Tribunal passed no dispute award which was already notified on 08.12.2011. From this it appears that matter has not been adjudicated earlier.

8. Workman has examined only one witness W.W.-1 Shri Shashi Bhushan Prasad who has stated in his evidence that he worked in SBI Branch Ghogha, Bhagalpur on the post of messenger/peon from 30.04.2000 to 06.03.2009 on daily wages. He worked like taking out of ledger, cash box, peon register and going to post office, bringing stationary etc. He used to serve notice in villages. He used to served water to the staffs. He worked from 10 A.M. to 5.30 P.M. In the begining he got Rs. 15/- per day which was inhanced to Rs. 50/- per day.

Payment was made to him from petty cash, he worked like permanent messenger. He worked for 240 days regularly in one calendar year. He has filed details of his working. Duly signed by him which has been marked as Ext.-W/4.

He has also proved Ext.-W/5 which is in respect of the payment of Rs. 890/- paid to him by Vishwajeet Kumar the then Branch Manager. He has also proved Ext. W/6 online statement print of Rs. 890/- in his name. He has also proved Ext. W/7 letter dated-04.10.2005 signed by Chief Officer of SBI, ADB, Ghogha Branch Bhagalpur by Janardhan Prasad Pandey, addres to Branch Manager, State Bank of India, ADB, Ghogha Branch.

He has also been proved Ext.W/8 letter dt.-04.08.2005 signed by Janardhan Prasad Pandey and addressed to Branch Manager State Bank of India, ADB, Ghogha.

He has also proved Ext.-W/9 the letter dt-02.12.2008 given to Shashi Bhushan Prasad for bringing K.V.P. payment. Similarly Ext.W/10 is letter dt. 08.11.2008 to bring

payment of N.S.C. signed by Ajit Vishal incharge Branch Manager.

Ext.W/11 is the letter dated 03.10.2002 signed by Rabindra Kumar Pandey Branch Manager and Ext.W/12 is letter dt.-15.12.2006 signed by Branch Manager to the Secretary Special Lok Adalat, Bhagalpur. Ext.-W/13 series is description of payment of wages for working of records.

He further stated that voucher was prepared for payment of his work and he has proved photo stat of 64 pages for the period 31.12.2006 to 31.12.2007. Further payment was made through register it has been marked as Ext.-W/14 with objection. There is signed on payment voucher and also signed of the then Branch Manager Sri Anil Kumar Ambastha, Anil Kumar Singh marked as Ext.-W/15. He has also proved Bank circular dated-02.01.2003 and 23.12.2002 marked as Ext.-W/16 and Ext.-W/16-A with objection and Ext.W/17 with objection and stated that according to circular the Branch Manager has sent letter the Zonal Office, letter no.- 21/178 dated-21.03.2003 marked as Ext.-W/18. He has also stated that his date of birth is 05.09.1981 but by mistake he submitted in the bank his date of birth is 31.03.1988. Prior retrenchment no notice or compensation was made to him.

In cross-examination he stated that the filed Ext.-W/14 Payment was made to him for serving water Ext.-W/14 at page 11 is letter to cheque collection which was given to him for depositing in another branch. He also identified Ext.-W/14 page 12 which was of 31st March, in respect of closing report. There is initial at page 12 of Ext.-W/14 of Manoj Kumar Singh. There is not his signature on Ext.W/14 at page 12 but one of its copy is Bank office which bear his signature. Payment was made to him on the same date when he served water. He used to daily for serving water. Bank has never told him not to serve the water. He further stated that Ext.-W/16, A page 66 is the circular for temporary appointment. Ext.-W/17 page 68 is the circular in respect of appointment of temporary employee who complete 240 days. Ext.W/6 relates to crediting of Rs. 890/- for distributing letter in villages. Ext.-W/9 is the letter of the bank for K.V.P. which was extra work done by him and no separate payment was made to him. A single payment he used to do all the workers.

He denied that he never worked for 240 days. He did all the work as done by permanent messenger. He does not remember the name of messenger of that time.

On recall in further examination-in-chief he stated that Ghogha Branch, of the Bank Janardhan Prasad Pandey was cash officer. In certificate of date of birth was year-1981 and in another certificate of School Leaving Certificate by mistake year 1988 has been mentioned which was later on corrected. He regularly worked for 240 days.

In cross-examination he stated that it is wrong to say that he himself left to going in the bank. He also denied

that he was called in Bank on the day but work in bank and he called for that he daily used to go to bank.

9. 18 documents has been exhibited on behalf of the workman. One document marked X-for identification which is School Transfer Certificate of Shashi Bhushan Prasad dt.-26.07.2006 and date of birth is 05.09.1981 which is also written in the word.

Ext.-W/1 is the letter sent by Branch Manager which is reminder letter for advising facts of instrument (s) forwarded to Manger Branch for collection. In which signature of Sri Shashi Bhushan Prasad has been attested by Branch Manager. This is dated 23.02.2007.

Ext. W/2 is the letter dated 10.03.2006 for supply of stationary. Letter was sent to Branch SBI Zonal stationary department, Bhagalpur. This letter bears attention of signature of Sri Shashi Bhushan Prasad.

Ext.-W/3 is also for delivery for some items. This letter was sent by Branch Manager to Manager Regional and stationary department Bhagalpur. In this letter signature of Shashi Bhushan Prasad been also attested.

Ext.-W/4 is chart signed by Shashi Bhushan Prasad stating his working days from the year 2002 to year 2009, in year 2000 he worked for 196 days and from the year 2001 to the year 2008 he worked for more than 240 days in each year and till March, 2009 he worked for 57 days.

Ext.-W/5 is the receipt signed by Shashi Bhushan Prasad in regard to payment of bill Rs. 890/- on 01.10.2005.

Ext.W/6 is the computer print in respect of above payment.

Ext.-W/7 is the letter sent to Branch Manager, SBI, ADB, Ghogha Branch by Janardhan Prasad Pandey cash officer in which it has been stated that Sri Shashi Bhushan Prasad has been working at this branch from 30.4.2000 as daily wages worker. Payment in petty cash book has always been segregated in labour charges column.

Ext.-W/8 is also letter sent by Janardhan Prasad Pandey cash officer SBI, Bhagalpur to the Branch Manager SBI, ADB, Ghogha stating therein that Shashi Bhushan Prasad has been working at this Branch from 30.04.2000 as daily wages.

Ext.-W/9 is the letter sent for payment of K.V.P. in favour of Branch Manager, SBI, Ghogha and signature of Shashi Bhushan Prasad has been attested.

Ext.-W/10 is the letter sent to SBI, ADB, Ghogha by Branch Manager in respect of submits the mentioned N.S.C. for payment in favour of Branch Manager. Signature of Shashi Bhushan Prasad has been attested.

Ext.-W/11 is the also letter sent to SBI, ADB, Ghogha for personal attention in the subject mentioned, in this signature of Shashi Bhushan Prasad is also attested.

Ext.-W/12 is the letter sent to the Secretary Special Lok Adalat by ADB Ghogha in which in respect of details of certificate cases Borrowers.

Ext.-W/13, W/13-1 to W/13-20 series is the receipt of payment to Shashi Bhushan Prasad for working in respect of working in record room etc.

Ext. W/14 & W/15 series is the same 64 pages are in receipt of payment of serving water from November, 2006 to 31.12.2007.

Ext.-W/16 is the photostat copy of Local Head Office of letter in respect of letter dated-2nd January, 2003 in respect of sub-ordinate temporary employee.

Ext.-W/16-A is letter dated 23.12.2002 in this letter it has been stated that in terms of extant instructions, temporary employment in the sub-ordinate cadre strictly prohibited and it has been observed that inspite of our unequivocal instruction many branches/office have engaged workmen or continued to engage the temporary employees who worked prior to 1997 in the subordinate cadre on temporary basis. It has also been observed that, in many branches/offices, whenever a need arises for the services for watch and ward staff to fill temporary vacancies, instead of seeking fresh names of candidates from Zila Sainik Board, services of ex-temporary watchman are utilised and these workmen are allowed to exceed the minimum number of day. Required for becoming protected employees under the I.D. Act, 1947 resulting in legal complications for the Bank. Such action is highly irregular and should be avoided at all costs. Similar situation may be obtaining in the category of messengers/sweeper also.

Para-3 in order to enable us to assess the gravity of the situation, please furnish the following information/particulars:-

- (i) How many temporary daily wage employees have completed 240 days service in a calendar year or any continuous period, of 12 calendar months at branches and offices under your control as on 30.09.2002
- (ii) Details of month-wise and year-wise temporary/daily wage service in each case.
- (iii) A statement indicating their names as well as rank in terms of the qualifying temporary service (aggregate) daily wage service put in as on 30.09.2002.

Ext.— W/17 is dated 22.05.2002 in respect of absorption of temporary employee in bank permanent service of all such employees who have put in more than 240 days continuous service in terms of section 25(B) of the I.D. Act.

Ext.- W/18 is details of temporary employees sent by Branch Manager to Asst. General Manager, reason Bhagalpur. It appears that name of Shashi Bhushan Prasad has been mentioned in the above mentioned report and it has been stated that he is working since 30.04.2000 as water boy.

10. Three witnesses have been examined on behalf of the management. M.W-1 Sri Anil Kumar Singh, M.W-2 Sri Shambhu Prasad Srivastava. and M W-3 Sri Ajay Kumar.

M.W.-1 Anil Kumar Singh in his examination-in-chief on affidavit as stated that he was posted at State Bank of India, ADB, Ghogha branch from August, 2007 to Septemeber, 2008 as branch manager. He is acquainted with Sri Shashi Bhushan Prasad. He worked on totally temporary basis at daily wagger when required. He has not worked regularly. Further he has stated that case has filed is not maintainable. Order has been not been passed in this case the objection made in written statement. The case has not been referred to this tribunal by the Govt. Claim for regularisation for service is wrong. Shashi Bhushan Prasad has filed C.W.J.C. No:- 2587 of 2009 which was dismissed vide dated- 27.04.2009 clearly stating that workman is daily wagger worker and he has no right for regularisation. When there was need Shashi Bhushan Prasad worked as daily wagger worker and the wages was fixed and was paid to him at the time of receiving payment but never raised dispute for being regular or permanent. It is wrong to say that he worked each year from 30.04.2000 to 06.03.2009 for more than 240 days in each year. He was terminated on 06.03.2009. He has not filed any authenticated documents that he worked more than 240 days. He was filed photostat petty cash book which is maintained for payment of wages of daily wages of daily worker. There is rules for employment in of subordinate cadre in Bank. Bank has not issued any appointment letter to him. He worked as and when required and payment was made to petty cash book. He worked as per order of branch manager as casual nature. No work was taken from him as regular nature. Mainly he worked as water boys. Seldom other work was taken from him and payment was made at fixed rate. He seldom distributed letter of bank. In case of vacancies, it is informed to the employment exchange after arrival of candidates regular appointment is made. Certificate of bank officer is not recognized according to the rules of bank. Any officer of branch manager of officer has no power to give such certificate. There is no provision to regularise daily wagger worker, who worked for long period. Appointment of subordinate staff was used to be done according to the seniority from panel. Now any appointment has not been done since several years. Shashi Bhushan Prasad has filed transfer certificate of Govt. High School in which date of birth has been mentioned on 31.03.1988 and he is working since April-2000, it means that at the time he was aged of 12 years. Taking working from such boy is not possible and is illegal. It is wrong to say that his service has been terminated and no compensation has been made to him u/s- 25(F) of the I.D. Act, 1947. He was not entitled to any compensation or notice. Management has not terminated his service and the when required work as taken from him and now there is no need to his work. Chart of working filed by the workman in totally wrong and baseless and the documents does not indicates that preceeding 12 month's from termination he worked for 240 days. It is the responsibility to prove that in preceeding 12 months he worked for more than 240 days.

Other statement of the workman has been denied. It is wrong to say that he worked from 30.04.2000 to 06.03.2009 regularly. Management has never terminated him and he is not entitled for equal pay for equal work, which is given to regular employee. Bank never did unfair labour practice. This witness as exhibited photo stat of petty cash book. He further stated that claim of workman is baseless.

In cross-examination he has stated that he was posted at ADB, Ghogha from August, 2007 to September, 2008. He does not know first working day and last working day of Shashi Bhushan Prasad. He was not paid regularly on daily, weekly or monthly basis. Rather he used to submit bill after two month and two and half month and then payment was made. During the working day of this witness payment was made @ 50% per day for work he did on the respective day. He does not know he Shashi Bhushan Prasad had not worked 240 days in preceeding one year. He has worked less than 240 days. He could not say that how many days he worked preceeding one year from 06.03.2009 and that working day is how much less than 240 days. In calculation of 240 day's he has not included sunday, leave days and 11 days of casual leave. In bank record will be available of the payment made to him. He does not know that branch manager has asked for school leaving certificate which ws submitted by the workman. After seeing the school transfer certificate which has been marked as X-for identification. This witness submitted that this certificate was not produced in the bank rather another certificate was produced which was defective and photostat of that certificate has been filed by the bank. Certificate was filed by preceeding branch manager which was defective. When Shashi Bhushan Prasad was sent out side for distributing letter then travelling expenses was paid to him. Witness further stated that one Janardhan Prasad Pandey ws working at ADB Ghogha who has retired and died. This witness does not identify his writing. He (workman) was authorised to receive on maturity cheque of K.V.P. from Bhagalpur post office. He further proved the authority letter which bears signature of Shashi Bhushan Prasad but this witness did not identify the signature of concerned officer. He (workman) was sent for advice of cheque collection from Munger. This witness further stated that authority letter was signed by Anil Kumar Ambastha, Branch Manager. Which also bears signature of Shashi Bhushan marked as Ext. W/1 Further he stated that he sent once to bring stationary from Bhagalpur Zonal Stationary Department. This witness identified authority letter signed by Shashi Bhushan Prasad and then branch manager Sri Shambhu Prasad Srivastava which was marked as Ext. W/2.

It is the duty of messenger to bring advice of cheque collection and stationary. The duty of messenger is to take out and keep register, voucher and to help in another work. It further duty to messenger to distributes local letter and to post letters. His duty is not to serve water. He denied that he is not acquainted with the facts of this case.

M.W-2 is Shambhu Prasad Srivastava this witness is desk officer is State Bank of India Zonal Office, Bhagalpur.

He stated that he was branch manager at ADB Ghogha from 17.07.2004 to 16.06.2006. He is acquainted with workman Shashi Bhushan Prasad. He was permanent manager at Ghogha branch. He never permanently took work from Shashi Bhushan Prasad. Shashi Bhushan Prasad was working to serve water at different rate and payment was made from petty cash. Shashi Bhushan Prasad never raised dispute of being regular or permanent employee. No appointment letter was issued to him.

In cross-examination this witness stated that he used to take work from Shashi Bhushan Prasad to take water and payment was made to him. Seldom payment was made to him @ Rs. 30/- and seldom @ Rs. 40/-. Shashi Bhushan Prasad working in the branch before joining of this witness in that branch. Details of payment from petty cash is maintained in a register which used to be cheque once in a month by branch manager. This witness posted in that branch for about 2 years and Shashi Bhushan Prasad worked in that branch irregularly. This witness never took work from Shashi Bhushan Prasad to bring stationary or cheque from other branch.

He further stated that on 10.03.2006 he has given order to Shashi Bhushan Prasad for bringing stationary and another order dated 23.02.2007 is to bring cheque but this witness could not say that order is under signature of then branch manager. Letter dated-14.09.2002 has been signed by then branch manager Sri R.K. Pandey which has been marked as Ext.-W/3. He denied that Shashi Bhushan Prasad also worked as messenger apart from bringing water.

M.W.-3 is Ajay Kumar, Branch Manager, in SBI at Ghogha Branch. He has proved photostat of petty cash register for the period from 13.04.2002 to 31.03.2009.

In cross-examination this witness stated that for the period from 30.04.2004 to 31.08.2008 he was at Dhamsain branch, Dist. Godda, P.B. branch, Bhagalpur town, Bhagalpur city branch Bhagalpur, Zonal office, Bhagalpur. Some where he was posted as branch manager and some where he was posted as accountant, field officer. This witness identified Shashi Bhushan Prasad from face but not by name. When he was joined at Ghogha branch, Dist. Bhagalpur, then he learnt that Shashi Bhushan Prasad has filed case before this tribunal. This witness has brought photostat of concerned ledger, petty cash register which has been attested by him marked as Ext.-M/10. He further stated that he had seen the document filed by him. He had seen the related documents of this case but this witness has not details knowledge of first working day and last working day. Before termination notice, notice pay and compensation was not paid to the workman and there is no mentioned of these matter in the ledger.

11. Documents exhibited on behalf of the management Ext.-M/1 is order passed by the Hon'ble High Court in C.W.J.C. No.-5287 of 2009 dated-23.04.2009. Writ was dismissed as withdrawn with a direction that in proceeding before Industrial Tribunal is to be decided in accordance

with law uninfluenced by the refusal by the Hon'ble Court to interfere only because of the availability of an alternative statutory remedy to the petitioner.

Ext.-M/2 is School Transfer Certificate of Shashi Bhushan Prasad in which date of birth of certificate in 31.03.1988.

Ext.-M/3 to M/9 is photo stat of petty cash register of the concerned year 2000-2009.

Ext.-M/8 it appears from Ext.-M/8 that cost of labour charge was paid regularly from 01.08.2007 to 13.09.2008 and thereafter only cost of has been written. Cost of what purpose has been made has not been maintained in cost register.

Ext.-M/9 cost of conveyance charge etc. has been mentioned.

Ext.-M/10 is the also photo stat of petty cash register for the period April, 2002 in which cost of water has been mentioned. Cost of water and cost of labour charge has been mentioned.

12. Written argument has been filled on behalf of the management stating therein application filed by the claimant is not maintainable in law nor on facts. Terms of reference is not only illegal but also contradictory. Section- 2A (1) and (2) of the Industrial Dispute Act is confined to termination of service and not regularization of service. Sri Shashi Bhushan Prasad was engaged as and when exigency of work arose on the daily basis and whenever work was taken from him, he was paid his wages as agreed between the parties. He performed works in the State Bank of India, ADB, Ghogha Branch as and when instructions was given by the Branch Manager. He claimed that he worked since 30.04.2000 till August, 2008 continuously is totally baseless and false. Claim that he worked continuously for a period of 240 days in a calendar year is also false. He used to discharge his duties on the days he was engaged on the instructions of branch manager. Such discharge of duties were casual nature and it cannot be said to be termination or perennial nature to discharge regular duties. Regular appointment are made who work as regular staff of the bank. Sri Prasad was wholly aware of the fact that the bank has its own rules of recruitment and his casual engagement as daily wager as and when required therein no compliance of the rules of recruitment of the Bank. During the whole period of his work as claimed by him, he never demanded for regularization of service. When he could not get any engagement in the bank even as casual daily wager, he started demanding regularization. Regularization in service is not a mode of appointment. Neither the Government nor their instrumentality can make appointment dehors the constitutional scheme of public appointment. Neither any vacancy was advertised nor any requisition to the Employment Exchange was sent nor the Branch Manager had any power to appoint subordinate staff. His engagement was totally non-est. Merely because a daily wager as such a temporary worker is continued for

long time, he would not be entitled to be absorbed in regular service or made permanent. In the instant case, case, his claim that he worked from 2000 to 2008 and that too continuously is wholly baseless. Hon'ble Supreme Court in the case of *State of Karnataka Vs. Uma devi* [2004(4) SCC 1] has held that merely because a temporary or casual employee has continued for a long time, he would not be entitled to be absorbed in regular service or made permanent. In view of decision *State of MP Vs. Lalit Kumar Verma* [2007 (1) SCC 575] "the appointment made in total disregard to the constitutional scheme as also the recruitment rules framed by the employer, which is state within the meaning of article 12 of the constitution of India, the recruitment would be illegal one. "Another decision referred is *M.L. Jain Vs. Indore Development Authority* [2005 (1) SCC 639]" Regularization cannot be claimed as matter of right. An illegal appointment cannot be legalized by taking to regularization. The constitutional scheme which the country has adopted does not contemplate any back door appointment.

It has further been submitted that section 2 (oo) of the Industrial Dispute Act says that retrenchment means termination by the employer of the service of a workmen for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. The case of *Shashi Bhushan Prasad* clearly follows u/s 2(oo) (bb) there was an implied agreement between the parties that his engagement comes to an end as soon as he leaves the bank meaning thereby that there was an oral agreement between the parties regarding this type of engagement. Even decision of *Escorts Limited Vs. Presiding Officer and others* [1997 (11) SCC 521] has been referred for the purposes that termination of service of the workmen does not constitute retrenchment. Further decision has been referred again it has been submitted that "the distinction between "irregular appointment" and "illegal appointment" is apparent. In the event appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is a part of the "State" within the meaning of article 12 of the constitutional, the recruitment would be an illegal one. The respondent was not appointed in terms of the statutory rules. He was not entitled to any regular scale of pay attached to any post. Therefore, he could not have been directed to be regularised in service having regard to the Constitution Bench. Hence, the Labour Court or Industrial Tribunal as also the High Court were not correct in directing regularization of service of the respondent." The appointment of Sri Prasad was not made in terms of statutory rules. Original appointment of Sri Prasad being illegal and not irregular. Therefore, no question arises of regularization of Sri Prasad.

The decision of *ESCORTS LIMITED Vs. PRESIDING OFFICER AND ANOTHER* has been filed in which it has been held that "Temporary appointment for a specified period (2 months in this case)—Terms of appointment enabling the employer to terminate the service at any stage

without assigning any reason—In such circumstances, termination of service under the said terms even though effected before the expiry of the specified period, held, did not amount to retrenchment. But in this case it has not been demonstrated the temporary appointment for a specific period of 2 months or for any specified period.

Next decision is reported case of "MAHENDRA L. JAIN AND OTHERS Vs INDORE DEVELOPMENT AUTHORITY AND OTHERS" In which it has been held that irregular appointments, not illegal appointments, held, can be regularised—Sub-Engineers (appellants) appointed on daily-wage basis under a project to be executed by respondent Development Authority—No appointment letters issued—Posts not sanctioned by Govt. Appointment not in compliance with the requirements of Act and Rules which were applicable in absence of any direction to the contrary contained in Standing Orders—Held, such illegal appointment were void ab initio.

In the case of STATE OF M.P. AND OTHERS Vs. LALIT KUMAR VERMA it has been held that Necessity of initial appointment being "irregular" and not "illegal". Respondent not having appointed as per the rules, nor being entitled to any regular scale of pay attached to any post, his appointment was illegal and not irregular. Continuous work for more than six months on daily wages without more, held, is not sufficient to entitle workman concerned to status of permanent employee.

13. Written argument has been filed on behalf of the workman stating therein that subject matter of the adjudication before this tribunal is "Whether the action of the management of State Bank of India, Ghogha Branch in denying regularization of services of Sri Shashi Bhushan Prasad as a Messenger/Peon and terminating his services in violation of Section 25 F of the I.D. Act is legal and justified? If not, what relief (S) the workman is entitled to?"

It has been stated that workman was appointed as a messenger/peon *w.e.f.* 30.04.2000. He used to work from 10 AM to 6 P.M regularly for which he was paid wages initially @ 15/- per day which was raised to @ Rs 25/-, Rs. 40/- and lastly @ Rs. 50/- per day. Payment was made through vouchers. He worked continuously from 30.04.2000 to 06.03.2009 and was informed at the closing hour on 06.03.2009 that his services stood terminated. When the workman went to attend his duties on the following day, he was stopped from working and was informed that his services stood terminated after the working of 06.03.2009. Neither notice, nor any notice pay nor any retrenchment compensation was given to him. But duty was perennial in nature. Case of the workman is covered under Section 2 (oo) of the I.D. Act, 1947 and the management violated the mandatory provisions as contained in section 25 F of the I.D. Act, 1947. Workman prays for reinstatement of his services as a messenger with back wages. Substance of written statement of the management has been delt. Further in reference of the evidence it has been stated that Ext.-W/1 to W/3 supported of the work of the workman. Ext.-

W/4 is details of work of the workman. Ext.- W/5 is proof of payment of sum of Rs. 890/-. Ext.-W/6 is the on live statement and Ext.-W/7 and Ext.-W/8 are the certificates of Sri Janardan Pandey, Chief Cashier, SBI, ADB, Ghogha Branch. In support of work of Shashi Bhushan Prasad. Ext.-W/9, W/10, and W/11 are the authorization for performing certain works. Ext.W/12 is the letter dt- 15.02.2006 addressed to Secretary, Lok Adalat, Bhagalpur. Ext.-W/13 is the proof of payment in 20 pages. Ext.-W/14 & W/15 relate to payment of wages. Ext.-W/16, W/17, W/18 relates to formulation of a scheme by State Bank of India for absorption of daily rated/temporary workers performing the jobs as a messenger. The workman was covered under the scheme and accordingly his application for absorption was forwarded by the Branch Manager to Regional Office and other higher offices.

MW-1 Sri Anil Kumar Singh, Branch Manager, SBI, ADB Ghogha submitted that he knew Shashi Bhushan Prasad who worked as temporary daily rated worker as per requirement and did not work continuously. In cross-examination he admit that his services were utilized for bringing cheque collection advice, distribution of letters, bringing stationary from Zonal Stationary Deptt. Bhagalpur. He further admits that the work of messenger relates to bringing cheque collection advice, bringing stationary etc. in cross-examination he had deposed that workman did not work for 240 days proceeding his termination but failed to submit the actual number of days he worked.

MW-2 is Sri Shambhu Prasad Srivastava, he worked as Manager from 17.07.2004 to 16.06.2006 and also admitted that the workman at SBI ADB Ghogha Branch. In cross-examination he admitted that the workman was working prior to his posting at Ghogha Branch.

MW-3 Ajay Kumar is the present Branch Manager of SBI, ADB, Ghogha Branch and admitted in cross-examination that he does not know the first and last working day of the workman. He was neither given any notice, notice pay or retrenchment compensation preceding his termination.

WW-1 Shashi Bhushan Prasad stated that he worked from 30.04.2000 to 06.03.2009 at SBI ADB Ghogha Branch as messenger/peon. He used to discharge the duties such as taking out ledger, cash box, peon book, attending post office work, bringing stationary, distribution of notice in the village, serving water to the members of staff. His duty hour ranged from 10 A.M. to 5.30 P.M. His duties were identical to that of a permanent messenger. He identified the letter of Sri Janardan Prasad Pandey, Chief Office (Ext. W/7 & W.8)

Further submitted is that on the basis of material on record the workman worked from 30.4.2000 to 06.03.2009; (ii) The workman discharged all the duties of a messenger; (iii) He used to discharge his duties from 10 A.M. to 5.30 P.M.; (iv) He was being paid his wages through petty cash vouchers; (v) The Bank formulated a scheme for

absorption of temporary/daily rated workers as messengers; (vi) The name of the workman had been forwarded by the Branch Manager to Regional/Zonal Office, Bhagalpur which are Exts.-W/16, W/16/A, W/17 & W/18; (vii) The termination of the workman is covered under section 2 (oo) of the I.D. Act; (viii) Management violated the mandatory provisions as contained in section 25F of the I.D. Act; (ix) Management resorted to unfair labour practices as per schedule V of the I.D. Act; and did not follow the principles of equal pay for equal work;

Relief (S) (i) Reinstatement as a temporary messenger; (ii) Payment of back wages from the date of termination; (iii) Absorption as messenger as per Bank's circular dated 2.1.2003, 23.12.2002 and as per Exts. W/17 & W/18; (iv) Payment of Rs. 10000/- as cost for contesting the dispute.

Some decisions has been cited on behalf of the workman. Out of which the decision of Hon'ble Patna High Court in *Mithilesh Kumar Singh Vs. State of Bihar and Ors.* In which petitioner was a workman in working in the work department of Public Works Department Building Circle, Purnia in this case reference was made "Whether the termination of service of Shri Mithilesh Kumar Singh, Treasure Guard, Public Works Department, Building Circle, Purnia, by the management from December, 15, 1992 is proper and justified? If not, whether he is entitled to reinstatement and/or any other relief?

In this case petitioner was initially appointed on-muster roll as a daily wager. He continuously worked for over three months and thereafter he was appointed in a regular time-scale of pay as Treasure Guard on a temporary and ad-hoc basis. But on August 26, 1992 he was asked to file a show why his appointment may not be terminated. In written statement of the management it was stated that initially appointment/engagement was illegal and invalid and did not confer any right upon him and, hence, it could be terminated without a month's notice or payment in lieu of notice and without paying the retrenchment compensation. Labour Court in the impugned award upheld the management contention that petitioner appointment was illegal and invalid and was made without any advertisement or any selection process. There was no sanctioned post against which the appointment could be made. Labour Court relied upon the decisions reported in 1986 PLJR 873 and 1987 PLJR 1090 in this decision it was held in case of initial appointment was invalid the concerned employee could not claim a writ of mandamus for payment of salary for the period he actually worked under the invalid appointment. These two decisions also do not even refer much less consider the mandatory nature of Section 25-F and have absolutely no relevance to the case in hand. The idea of illegal or invalid appointments in quite foreign to the scheme of the Industrial Disputes Act. For application of section 25-F is that the concerned workman should have been in continuous service for 240 days in a calendar year. In fact, the termination of employment of a workman on the ground that his initial appointment was not legal and valid itself qualifies as retrenchment within the

meaning of Section 2(oo) as termination for illegal and invalid appointment has not been made an exception to the definition of retrenchment. This aspect of the matter has been considered in a Division Bench decision of the Rajasthan High Court in the case of *Prabhudayal Vs. Alwar Sahkari Bhumi Vikas Bank Ltd. and Ors.*, in which it has been held that "The definition of retrenchment as given in the Act is wide and comprehensive to include all types of terminations of service unless the termination falls within any of the excepted categories and it was held that termination of service of the petitioner amounts to retrenchment and was statutorily required to be in compliance with the provision of Section 25-F of the I.D. Act.

Another decisions is of the Supreme Court of India in *Mineral Exploration Corporation Vs. Mineral Exploration Corporation* which was decided on 26th July, 2006 in Appeal (civil) 2027-2028 of 2000. In this case according to the union workman engaged in Mineral Exploration Corporation Ltd., hereinafter referred to as "the Corporation" have completed minimum 8 years and maximum 20 years of service but they were not regularized nor paid regular wages as per the revision of pay scales. The workman started demanding regular pay scale and their regularization, corporation resorted to retrenchment of workmen which caused serious industrial unrest. Reference was made "Whether the action of the management of Mineral Exploration Corporation Ltd., Nagpur in not regularizing the services of S/Shri A. K. Janson 2144 others (as per Annexures 'A' attached) and depriving them all fringe benefits like permanent workers is justified? If not, to what relief the concerned workmen are entitled to and from what date? The tribunal after recording the evidence of the both parties and considering the arguments *vide* its award dated 24.03.1998, held that all the workman in dispute, workman be regularized in the service. The corporation preferred writ petition before the High Court which was allowed and award was set-aside. The High Court affirmed the findings of the Tribunal. It has been stated that all the time of hearing, our attention was drawn to the judgement delivered by the Hon'ble Court in the case of *Secretary, State of Karnataka & Ors. Vs. Umadevi, 3 and Ors.*, [2006]4 SCC and it has been held that the said case deals with public employment, absorption, regularization, or permanent continuance of temporary contractual, casual, daily-wage or ad-hoc employees appointed/recruited and continued for long in public employment de hors the constitutional scheme of public employment. Further it has been stated that one aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S. V. Narayanappa* [1967]3 SCR 128, *R. N. Nanjundappa* [1972] 2 SCR 799, and *B.N. Nagarajan* [1979]3 SCR 937, of dully qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of order of the courts or of tribunals. The question of regularization of the service of such employees may have to be considered on merit in the light of the principles

settled by this Court in the case above referred to and in the light of this judgement. The Union of India, the State Government and their instrumentalities should take step to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts. It has also been stated that respondent an industry governed by I.D. Act, 1947 as well as the provision of Industrial Employment Standing Order Act, 1946 the standing order define contingent/temporary and casual employee as under the temporary workman as one who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period. The casual workman is a workman whose employment is of casual labour. Therefore it will be clear that employees engaged and continued together can't be termed as temporary or casuals.

Another decisions is the decision of Hon'ble S.C. in case of Dhirendra Chamoli and Anr. State of U.P. which was decided on 5 August, 1985 in citation 1986(52) FLR147, (1986)ILLJ134SC, (1986)I SCC 637. The Writ petition the complaint made is that there are a number of person who are engaged by Nehru Kendra as casual workers on daily basis and though they are doing the same work as is performed by class IV employees appointed on regular basis, they are not being given the same salary and allowance as are being paid to class IV employee. In this case writ petition were allowed and rules was make absolute and directed the Central Government to accord to these person who are employed by the Nehru Kendras and who are concededly performing the same duties as class IV employees, the same salary and conditions of service as are being received by class IV employee, except regularisation which cannot be done since there are no sanctioned posts. But we hope and trust that posts will be sanctioned by the Central Government in die different Nehru Yuvak Kendras, so these persons can be regularised. It is not at all desirable that any management and particularly the Central, Government should continue to employ persons on casual basis in organisations who have been in existence for over 12 years. The salary and allowance of class IV employees shall be given to these persons employed in Nehru Yuvak Kendras with effect from the date when they were respectively employed. Another decision has been referred of the Supreme Court of India, in Harjinder Singh Vs. Punjab State Warehousing Corp. decided on 5th January, 2010, in civil appeal No.-587 of 2010 in which termination of the service of the workman was found incontinuous version of section 25(G) of the Industrial Dispute Act. But impugned order was liable to be set aside. Another decision is also of the Hon'ble Supreme Court of India in Devinder Singh Vs. Municipal Council, Sanaur which was decided on 11th April, 2011 in this case service was terminated without holding any enquiry and without giving him notice and compensation and that persons junior to him were retained in service. Respondent pleaded that the appellant was engaged on contract basis and his service was terminated because the Director, Local Self Government did not give approval to the resolution passed for his

employment. The Labour Court held that the appellant had worked for more than 240 days in a calendar year preceding the termination of his service. Writ petition reliance was based on the judgement in Secy.. State of Karnataka Vs. Umadevi (2006) SCC 1; State of M.P. Vs. Lalit Kumar Verma (2007)1 SCC 575; Uttaranchal Forest Development Corporation Vs. M.C. Koshi (2007(2) SCC (L&S) 813; M.P. Administration Vs. Tribhuban (2007)9 SCC 48; and others decision are the found adopted that Labour Court should not have ordered reinstatement of the appellant because his appointment was contrary to the recruitment rules and articles 14 and 16 of the constitution and it would not be in public interest in sustain the award of reinstatement after long lapse of time. In para 13 it has been stated that source of employment the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. Further in para 14 it has been stated that it is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. In the result the appeal was allowed and award passed by the Labour Court for reinstatement of the appellant is restored and it was also directed that respondent shall be entitled to wages for the period between the date of award and the date of actual reinstatement.

Another decision reported in 2014-III-LLJ-772 Calcutta High Court. Another decision is Hon'ble Supreme Court of India in case of Hari Prasad & Anr. Vs. Employer I/R to Mangmt. of FCI & Anr. In which the tribunal found that termination of the applicant was illegal they were directed to be reinstated with 50% back wages. FCI filed writ petition were dismissed. LPA was allowed by Division Bench. In this case reference was that "Whether the action of the management of Food Corporation of India, in retrenchment Shri Hari Nandan Prasad, Ex-Casual workman, in contravention of Section 25-F of the I.D. Act, 1947 and denying reinstatement with full back wages and regularization of his service is legal and justified? If not, to what relief the concerned workman is entitled to?" In this case deicision of Delhi Development Horticulture Employees Union Vs. Delhi Administration AIR 1992 SC 789 and constitution bench judgement in the case of Secretary, State of Karnataka Vs. Uma Devi & Ors. (2006) 4 SSC 1 has been dealt. In this case contention raised by the appellant before the High Court was that the ratio of Uma Devi's case had no relevance in the cases of industrial adjudication by the Labour Courts/Industrial Tribunals and this submission that found to be meritless by the Hon'ble High Court taking support of the judgment of this Court in U.P. Power Corporation Vs. Bijli Mazdoor Sangh & Ors. (2007) 5 SCC 755. In this case which was found that appellant no.- was not in service on the date when scheme was promulgated i.e. as on 6.5.1987 as his services were dispensed with 4 years before that circular saw the light of day. Therefore, in the result of monetary compensation in lieu of reinstatement

would be more Appropriate in his case but in case of appellant no.2 which was hold that CGIT rightly held that he was reinstate with 50% back wages.

FINDINGS

14. The relief claimed in this case is against the management of State Bank of India over denial of regularization of the services as a messenger/peon and wrongfully termination for the service of a temporary messenger/peon *w.e.f* 06.03.2009 while working at State Bank of India, Agriculture Development Branch, Ghogha, Disrt. Bhagalpur.

15. Dispute has been raised on 19.06.2009 and the conciliation proceedings ended in failure on 27.08.2010. Question formulated and by the petitioner in this case is "Whether the action of the Management of State Bank of India, Ghogha Branch in denying regularization of services of Sri Shashi Bhushan Prasad as a Messenger/Peon and terminating his services in violation of Section 25 F of the I.D. Act is legal and justified? If not, what relief(s) the workman is entitled to?"

16. The workman was working from 30.04.2000 to 06.03.2009 and was informed at the close of office hour on 06.03.2009 that his services stood terminated. When the workman went to discharge his duties on the following day, he was stopped from working and was again informed of termination of his services from the evening of 06.03.2009. Neither he was given any notice nor notice pay no retrenchment compensation preceding his termination. He was paid his wages regularly from 30.04.2000 to 31.08.2008. On 01.09.2008, the workman was instructed by the authority to take payment in different names to which the workman did not agree. He was not made payment of his wages from 01.09.2008 to 06.03.2009. The termination of the workman is covered under Section 2(oo) of the I.D. Act, 1947. Relief claim is (i) Reinstatement, as a temporary messenger with back wages; (ii) Regularization of services as a messenger; (iii) Payment of due wages for the period of working; (iv) Payment of wages from 31.08.2008 to 06.03.2009; (v) Payment of a sum of Rs. 10000/- for contesting the dispute.

17. Written statement of the management stating that therein that application filed by the claimant u/s 2A (1) and (2) of the amended Industrial Dispute Act, 2010 is neither maintainable in law nor on fact. Dispute have not been referred u/s 10(1)(d) of the Industrial Dispute Act. Terms of reference has framed by the person is not only illegal but also contradictory. Section 2A (1) and (2) is confined termination of service and not regularization in service.

It appears from perusal of Section-2A of the Industrial Dispute Act, it appears that this relates to dismissal etc. of a individual workman to be deemed to be an Industrial Dispute.

18. Section-2(A) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment

or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute.]

19. This section also provide that workman mny make an application direct to the Labour Court or Tribunal for adjudication to the dispute is referred therein after expiry of forty five from the date he has made the application to the Conciliation Officer of the appropriate Government. This case has been filed on 18.03.2011 as such as the case maintainable.

Section-2A relates to discharge, dismisses, retrenches or otherwise terminates the services of an individual workman. So far the matter is concerned for regularisation that will be discussed later on. Further it has been stated that it is totally baseless and denied that workman had worked continuously 240 days in every calendar years.

20. Further it has been stated that bank has its own rules of recruitment for appointment of subordinate cadre staff satisfying the requirement of Article 14 and 16 of the Constitution of India. He was not issued any appointment letter even to work as temporary staff. His engagement was purely as a casual worker on daily wages engaged as and when required. Payment were made to him through petty cash which means payment against some expenses which are in petty nature and that cannot be termed as regular payment of wages or other benefit. Had therein appointment letter then it would proof terms of appointment of the workman. Further it has been stated that during the whole period of his work as claimed by him, he never demanding for regularization in service. It is only when he could not get any engagement in the Bank even as casual daily wager, he started demanding regularization. Another contention is that merely because a daily wager as such a temporary worker is continued for long time, he would not be entitled to be absorbed in regular service or made permanent. His claim that he worked from 2000 to 2008 and that too continuously is wholly baseless.

About the case of State of Karnataka Vs Uma Devi reported in [2004(4) SCC 1] has been stated but this case only relates to Government service and it cannot said that bank is not an industry. When bank is an industry then the dispute will be governed under the provision of the Industrial Dispute Act. In this contest several decision has been filed on behalf of the workman which are Mithilesh Kumar Singh Vs State of Bihar and Ors reported in 1994 (42) BLJR 1300. (1995) 1 LLJ 973 Pat. On the Mineral Exploration Corporation Vs Mineral Exploration Corporation by Hon'ble Supreme court of India. Further the case of Dharendra Chamoli and Anr. Vs State of U.P. decision by Hon'ble Supreme Court of India and reported in 1986 (52) FLR 147, (1986) 1 LLJ 134 SC, (1986) 1 SCC 637 and other so many decisions in which several decisions has been discussed. Other case is Devinder Singh Vs. Municipal Council, Sanaur decided by Hon'ble Supreme Court of India in which case of Uma Devi has also been dealt and other decision cited by the management bank has been dealt. Further it has been stated that by order date 27.04.2009

case of C.W.J.C. No. - 5287 of 2009 filed by the petitioner, the Hon'ble Court hold that the person concerned is daily wager. As there is no provision in the bank for regularization of such a daily wager.

21. In the rejoinder of the workman in para-13 it has been stated that workman discharged the duties of a messenger from 30.04.2000 to 6.03.2009 uninterruptedly. To continue a workman for a longer period without any service condition is a act of unfair Labour Practice on the part of the management as per schedule V of Industrial Dispute Act, 1947. Further it has been stated that remedy of Indusutrial worker is under Industrial Dispute Act.

22. In the evidence of Shashi Bhushan Prasad has stated that he worked in the State Bank of India, ADB, Ghogha Branch, Dist.- Bhagalpur as a messenger/peon from 30.04.2000 to 6.03.2009. He worked from 10 A.M. to 5.30 P.M. He worked like a permanent messenger in one year. He worked for 240 days regularly. He has proved Exts.-W/ 5 & W/6 regarding his payment by then branch manager of Rs. 890/-. He has also proved Exts.-W/7 and Exts.-W/8 and other documents filed by him. He has also proved photo state of vouchers in 66 pages for the period from 31.12.2006 to 31.12.2007 he has also proof cirucular sent by branch manager to Zonal office on 21.03.2003 and dated 02.01.2001 and 02.01.2002. He has stated that his date of birth is 05.09.1981 but by mistake that was written 31.03.1988 which was rectified. He has also stated that no compensation and no payment was made to him before removal from service.

In cross-examination he has stated that Exts.-W/14 relates to the payment for serving water and for cheque collection. In para-2 of the cross-examination he has stated that Janardhan Pandey was cash officer of Ghogha branch. In certificate his date of birth is mentioned year 1981 but his another certificate by mistake it was written year 1988 and that mistake was corrected. He regularly worked for 240 days. In further cross-examination he stated that it is wrong to say that he himself left to come to bank. He daily used to go bank. Nothing was challenged in the cross-examination that this workman was not working for 240 days in a calendar year or he did not work in the bank from 30.04.2000 to 06.03.2009.

23. Management witness M.W-1 Anil Kumar Singh who is Dy. Manager in SBI Bhagalpur branch. He has stated that he was posted at ADB Ghogha Branch for the period August-2007 to September-2008. Shashi Bhushan Prasad was temporary daily wager. He did not work regularly. He further stated that claim for regularisation his service is wrong. In view of the order passed in C.W.J.C. No.-2587 of 2009 by Hon'ble Patna High Court. He has also stated that photo stat of petty cash book has been filed by the bank. There is rule for recruitment of sub-ordinate cadre staff. No appointment letter was issued. He worked as per order of Branch Manager and work was casual in nature. There is no provision to regularise a daily wager, who worked for the long period. He was not entitled for any compensation or notice.

In cross-examination he has satted that he posted at ADB Ghogha Brnach for the period from August-2007 to September-2008. He does not know first working day and last working day of Shashi Bhushan Prasad. Payment was made after two or half month on submitting the bill. He does not know in preceeding period counted from 06.03.2009. Shashi Bhushan Prasad had not work for 240 days. He could not tell in year prior to 06.03.2009 for how many days Shashi Bhushan Prasad had worked. There will be record in bank for the payment made by the bank to him. He has also stated about the authority letter given to him Shahsi Bhushan Prasad for receiving maturity cheque of K.V.P. from Bhagalpur post office. He proved authority letter given to him for receiving advice of cheque collection from Munger which was signed by branch manager namely Anil Kumar Ambastha. He has also proved contents of Ext.-W/ 2. Duty of messenger is to distribute local letter and to go to post office for dispatching the outside letter.

24. Next witness on behalf of the management Shambhu Prasad Srivastava who was posted at ADB Ghogha Branch from 17.07.2004 to 16.06.2006 he is acquainted with Shashi Bhushan Prasad. He stated that he did not took work from Shashi Bhushan Prasad for the whole day mainly.

In cross-examination he has stated that Shashi Bhushan Prasad was working in the branch prior to joining this witness. Payment of petty cash is entered in one register which is checked once in a month by branch manager. During the period of two years Shashi Bhushan Prasad irregularly attended the branch. He has given work on 10.03.2006 to Shahsi Bhushan Prasad to bring stationery.

25. Management witness No.3- is Ajay Kumar, Branch Manager in SBI Ghogha Branch who deposited pohto stat of petty cash register from 13.04.2002 to 31.03.2009. He stated that for the period from 30.04.2004 to 31.08.2008 he was posted at Ghamsain branch Dist.-Godda, PB Branch, Bhagalpur city branch and Zonal office Bhagalpur. He identify the Shashi Bhushan Prasad but was not acquainted with his name. Prior to remove from the service workman was not given notice, notice pay and retrenchment compensation.

26. Ten documents has been Exhibited on behalf of the mangement. M.W-1 is photostat of the order passed in C.W.J.C. No.-5287 of 2009 filed by Shahi Bhushan Prasad. In which it has been stated that in his own plea as para-8 involved the question of facts and claim under the Industrial Dispute Act. Where a daily wages post cannot lay out his claim in a writ petition. Learned council of the petitioner press for leave to withdraw this petition to persue his remedy under the Industrial Dispute Act.

It is for the petitioner to choose his remedy after writ court declined interference. This court makes no observation with the regards to the case. The writ is dismissed as withdrawn. The proceeding before Industrial Tribunal is to be decided in accordance with law uninfluenced by refusal by this court. So mater is to be

decided by this tribunal. Ext.-M/2 is SLC in which date of birth has been mentioned as 31.03.1988. This has got no relevancy when corrected SLC has been submitted by the Shahsi Bhushan Prasad. Ext.-M/3 to M/9 is photo stat of petty cash register.

In the written statement the management bank, claim of the workman that he worked since 30.04.2000 to August-2008 worked continuously 240 days in every calendar year, have also denied. Management witness no.-1 Anil Kumar Singh, in cross-examination in para-29 could not say the first working day and last working day of Shahsi Bhushan Prasad. But during the period of post of this witness he was paid Rs. 50/-. This witness also could not tell prior to 06.03.2009 for how many days workman worked and what period of less than 240 days. This witness in para-32 identified the authority letter given of Shahsi Bhushan Prasad when he was sent for work to post office etc. As such it is apparent that Shashi Bhushan Prasad working in the bank. M.W-2 Shambhu Prasad Srivastava was posted at Ghogha Branch from the period from 17.07.2004 to 16.06.2006 and he identified workman Sri Shashi Bhushan Prasad. He further stated that in para-7 in cross-examination that prior his posting on that branch Shashi Bhushan Prasad worked there.

27. M.W-3 Ajay Kumar has identified petty cash register from the period 13.04.2002 to 31.03.2009. This witness identified Shashi Bhushan Prasad by face but this could not tell first and last working day of Shashi Bhushan Prasad. From petty cash register counting from March-2008 only cost of labour, tea, labour charge and etc. shown, but two whom payment was made has not been shown. So it could not be gather to whom payment it was made.

28. From evidence of W.W-1 Shashi Bhushan Prasad it appears that he was working on the post of messenger/peon from the period 30.04.2000 to 06.03.2009. He has stated that payment was made to him from petty cash. He has exhibited details of his working day vide Ext.W/4. From which is appears that he worked for 295 days in the year 2008 and 57 days in the year 2009 this documents has been exhibited without objection. He has also exhibited print out of online statement Ext.-W/6 which is in name of Shashi Bhushan Prasad which is dated 24.12.2008. Ext.-W/2 is the letter sent to S.B.I Zonal Stationery Deptt for bringing stationery dated 10-03-2006 and signature of Shashi Bhushan Prasad has been attested.

29. Ext. -W/7 is the letter sent by Mr. Janardhan Prasad Pandey, cash Officer S.B.I. ADB, Ghogha Branch, Bhagalpur to branch manager SBI that Shashi Bhushan Prasad has been working at this branch from 30.04.2000 as daily wager worker. His payment in petty cash book has always been segregated in labour charges. This letter was sent information and needful. From this letter it appears that Shashi Bhushan Prasad was working from 30.4.2000 and letter is dated 04.10.2005 from it appears that he was still working there. Ext.-W/8 is another letter sent by same Janardhan Prasad Pandey to Branch Manager, SBI, ADB,

Ghogha Brnach. From which it appears that Shashi Bhushan Prasad was working since 30.4.2000 in the bank as daily wages this letter is dated-04.10.2005 Ext.-W/9 is letter sent by Branch Manager from Ghogha branch to Sub post master, Bhagalpur for payment of KVP this letter is dated 02.12.2008 and signature of Shashi Bhushan Prasad has been attested from which it appears that till 02.12.2008 Shashi Bhushan Prasad was working there. Another letter was sent by the Branch Manager vide Ext.-W/10 in which signature of Shashi Bhushan Prasad was attested in which it has been stated that NSC payment in favour of Branch Manager has been captioned. Ext.-W/11 has also been to Chief Manager, SBI, Bhagalpur in which signature of Shashi Bhushan Prasad has been attested. Ext-W/12 is the letter sent through Shashi Bhushan Prasad whose signature was attested as such Shashi Bhushan Prasad working regularly. Ext-W/13 series is regard to the payment receipts by Shashi Bhushan Prasad on 24.12.2000, 15.02.2002, 22.12.2001 and several dates working in records shows.

30. Exts.-W/14 series is the details of payment paid to Shashi Bhushan Prasad from the period 23.01.2007 to 31.12.2007 this indicates that Shashi Bhushan Prasad was working in the bank for the period 240 days in the year 2007. Exts.-W/15 is the letter sent by A.G.M, Circle Office, Bhagalpur in regard to subordinate temporary employee and Exts.W/16 is also letter to Circle Development office. It is observed that in spite of instruction some workman are working and legal complication arising if on becoming them protected employee under the Industrial Dispute Act, 1947. Exts.W/17 in which it has been stated that please arrange to submit full particulars of all such employees who have put in more than 240 days continuous service in terms of Section 25(B) of the Industrial Dispute Act together with your reasoned recommendation for their absorption or otherwise on enclosed proforma immediately. It means that the bank was aware of provisions of I.D. Act, 1947. From Exts.-W/18 it appears that branch manager has sent letter to A.G.M, Bhagalpur stating therein that Shashi Bhushan Prasad was working there from 30.04.2000 as water boys to from there Exts, it appears that he was also doing other work because his signature is attested when he was sent to another place and from Exts. W/14 it appears that he regularly worked for the period from 31.12.2006 to 31.12.2007. This documents has not been challenged. Apparently Shashi Bhushan Prasad worked for more than 240 days in the year 2007 as such he became protected employee under I.C. Act. From Exts.-W/9, 10, it appears that he was sent for receiving payment of K.V.P. on 02.12.2008 and for receiving payment of NSC on 08.11.2008. In cross-examination M.W-1 has stated that regular payment was not paid to the workman because bill was being submitted after two and half months then payment was made. So it may be gathered that he was working always in the bank. Bank has not submitted the vouchers of payment of Shashi Bhushan Prasad and has not demonstrated that how many less date counting from 240 days Shashi Bhushan Prasad was working. In para 34 he has stated that advice cheque of collection and to bring

was duty of messenger and from this evidence it appears that Ext. demonstrate that Shashi Bhushan Prasad even working like messenger.

31. From definition of 25(B) and photostat of payment vouchers it appears that in the year 2007 there was uninterrupted service though this workman was working since 30.04.2000 and even becoming in continuous service from him till 06.03.2009. So prior to his removal compliance of section-25F of the I.D. Act must have been done. Even from Exts.-M/10 it appears that counting from 06.03.2008 labour charge was regularly paid till 28.02.2009. Which is clearly apparent, so inference may be gathered that payment was made to Shashi Bhushan Prasad for the period more than 240 days in a calendar year last preceding from the date of his removal because bank could not demonstrate who was another or other workman working in the bank and this case relates to Shashi Bhushan Prasad

32. In view of the decisions of Hon'ble S.C. in case of Hari Nandan Prasad & Another Vs Employer I/R to management of FCI & Another when retrenchment is bad then service be regularised. In that view of the matter Shashi Bhushan Prasad had became in the category protected workman. Hence, the case of the workman is allowed. Management is directed to reinstate and regularise the service of workman from the date 06.03.2009 on which he was removed from service. Further, management is directed to give all consequential benefits to the workman and all due wages from the date of his removal from service and upto the date of his reinstatement.

Accordingly the order is being given.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 6 जुलाई, 2015

का.आ. 1420.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या (180/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2015 प्राप्त हुआ था।

[सं. एल-41012/52/92-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 6th July, 2015

S.O. 1420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.180/93) of the Cent.Govt.Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of S.E. Railway and their workmen, received by the Central Government on 06.07.2015.

[No. L-41012/52/92-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO.CGIT/LC/R/180/93

Shri Haridin,
S/o Shri Kalloo,
C/o Mandkur Baig,
Khalipadao, Birsinghpur,
Distt. Shahdol (MP)

... Workman

Versus

Chief Engineer (Construction),
S.E. Railway,
Bilaspur

... Management

AWARD

Passed on this 29th day of May 2015

1. As per letter dated 8-9-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-41012/52/92-IR(DU). The dispute under reference relates:

"Whether the action of the Chief Engineer (Construction), South Eastern Railway, Bilaspur (MP) in terminating the services of Shri Haridin, S/o Shri Kalloo, Casual Labour under PWI(C), Manendragarh w.e.f. 24.3.83 is justified? If not, to what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/4. Case of Ist party workman is that he was appointed as casual Trolleyman under PWI Manendragarh from 18-6-76. He was working as casual Trolley man from 18-6-76 to 15-7-76 and watchman from 15-7-76 to 9-1-77, as trolleyman from 10-1-77 to 15-7-78 as gangman from 24-3-81 to 19-4-83. That he fell sick and was on leave from 20-4-83 to 30-4-83. He reported on duty on 13-5-83 submitting medical certificate. He was not allowed on duty, his services were terminated from 20-4-83 without any notice. He was not paid retrenchment compensation. Any kind of enquiry was not held against him. Show cause notice was not issued. Termination of his service is in violation of Section 25-F of ID Act. The other employees junior to him were taken in service. IInd party did not consider his case for reinstatement therefore he raised the dispute. Workman prays for retinstatement with backwages.

3. IInd party filed Written Statement at Page 5/1 to 5/3 opposing claim of the workman. IInd party in para-3 of Written Statement has also shown working days of workman from 18-6-76 to 15-7-78. Workman had abandoned the job. Thereafter he was given fresh appointment from

24-3-81 to 16-4-83. Thereafter workman did not turnup. He cannot blame management when he voluntarily abandoned the job. IInd party submits that as workman himself abandoned job, notice was not required to be given. IInd party reiterates that workman was working as casual labour from 18-6-76 to 14-10-78, thereafter he was reappointed on 24-3-81 and he worked upto 15-4-83. Workman did not turn up for duty after 15-4-83. Those contention have nexus with the dispute under reference as workman was not terminated by IInd party management.

4. Workman submitted rejoinder at Page 6/1 to 6/2 reiterating his contentions is statement of claim. Workman further submits that he had submitted complaint before ALC in 1984, conciliation proceeding was registered, Chief Engineer, Bilaspur was advised to reinstate workman as per letter dated 10.6.86. The evidence was not adduced by Chief Engineer. Process for reappointment was not followed by IInd party.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the Chief Engineer (Construction), South Eastern Railway, Bilaspur (MP) in terminating the service of Shri Haridin, S/o Shri Kalloo, Casual Labour under PWI(C), Manendragarh <i>w.e.f.</i> 24-3-83 is justified.	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Workman is challenging termination of his service for violation of Section 25-F of ID Act. That he was not served with notice, retrenchment compensation was not paid to him before terminating his service.

7. IInd party contented that the service of workman were not terminated, workman himself abandoned his service. As per pleading of parties, there is no dispute about working by workman from 18-6-76 to 15-7-78 and his fresh engagement from 24-3-81 to 16-4-83. Parties are in dispute that IInd party submits workman was not terminated. He himself abandoned the job whereas workman says he was not allowed on duty.

8. Workman filed affidavit of his evidence stating the period of his working from 18-6-86 to 15-7-78, 24-3-81 to 19-4-82. He was on sick leave from 28-4-83 to 30-4-83. He had submitted medical certificate for joining duty on 13-5-83. He was not allowed to join. He worked for total 1570 days. In his cross-examination, workman says appointment letter was not given to him. When he was

working, he was engaged for a period on 2-3 months. He was appointed on 18-3-76. He worked till 20-9-78 and again from 24-3-81 to 19-4-83. Thereafter he had to leave the work, he had submitted application for leave. On 13-3-83, he was told that he was terminated from service. He denies that he was habitually remaining absent therefore he was terminated from service. The evidence of workman about his working days is not challenged. The evidence of workman is supported by the witness Mr. Balaji. Evidence of witness Balaji about working of workman with IInd party from 1976 is not shattered.

9. Management filed affidavit of evidence of witness Shri Ram Bhusan Mishra contending that workman himself left the job and delay in raising dispute. In his cross-examination, management's witness denies that workman was not allowed to work with object of giving break in service. Management's witness denies suggestion that workman had completed 240 days continuous service. The evidence on record is clear that in first spell of his working from 1976-78, workman had completed 240 days service. In IInd spell from 1981 to 1983, he completed 240 days continuous service. The conciliation proceedings failed. It shows that management did not pursue its contentions that workman had left the job. If it would have been true, there was no hurdle in allowing him to join duty. Though workman completed 240 days continuous service during both spell of his working, his services are terminated without notice, retrenchment compensation is not paid to him. The termination of his service is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No. 2 in Negative.

10. Point No. 2— workman was working as casual employee in two spells during 1976 to 1978 and 1981 to 83. IInd spell of workman was for about 2 years. The services are terminated in violation of Section 25-F of ID Act. Considering workman was engaged as casual labour and short span of his working in the IInd Spell, relief of reinstatement with backwages would not be appropriate, compensation Rs. 40,000/- would be justified. Accordingly I record my finding in Point No. 2.

11. In the result, award is passed as under:—

(1) The action of the Chief Engineer (Construction), South Eastern Railway, Bilaspur (MP) in terminating the services of Shri Haridin, S/o Shri Kalloo *w.e.f.* 24-3-83 is not legal.

(2) IInd party is directed to pay compensation Rs. 40,000/- to the workman within 30 days from the date of notification of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 6, जुलाई, 2015

का.आ. 1421.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सारन क्षेत्रीय ग्रामीण बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण पटना के पंचाट (संदर्भ संख्या 04/(C) of 2009, 02/(C) of 2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/07/2015 प्राप्त हुआ था।

[सं. एल-12012/148/2001-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 6th July, 2015

S.O. 1421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby Publishes the Award Ref. 04(C) of 2009, 02 (C) 2003 of the Indus.-Tribunal-Cum-Labour Court, Patna as shown in the Annexure, in the Industrial Dispute between the management of Saran Kshetriya Gramin Bank and their workmen, received by the Central Government on 06/07/2015.

[No. L-12012/148/2001-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA.

Reference Case No.:- 04(C) of 2009
02 (C) of 2003

The management of the Chairman, Saran Kshetriya Gramin Bank, chapra and their workman Sri Shatrughan Prasad Sah, Nandanpur, Gawandari, Chapra.

For the management : Sri Ajay Kumar Sinha, Advocate.
Sri Manoj Kumar Sinha, Advocate.

For the workman: Sri B. Prasad, President,
Bihar Provincial Gramin Bank
Employee Association.

Present : Bipin Dutta Pathak
Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, Dated the 2nd June, 2014.

By Notification order No. 12012/148/2001-IR (B-I) dated-11.12.2001 which was received on 24.12.2001/01.07.2003, the Government of India, Ministry of Labour, New Delhi has referred under clause (d) of Sub-Section (1) and Sub-Section (2A) of Section-10 of the Industrial Dispute Act, 1947 (hereinafter to be referred to as "the Act"), the following

dispute between the management of the Chairman, Saran Kshetriya Gramin Bank, Chapra and their workman Sri Shatrughan Prasad Sah, Nandanpur, Gawandrari Chapra for adjudication to this Tribunal.

SCHEDULE

"Whether the action of the management of Saran Kshetriya Gramin Bank Saran is terminating the services of Shri Satrugan Prasad Sah, Sweeper-Cum-Messenger is justified? If, not what relief the workman is entitled to?"

2. It appears that *vide* order sheet dt. 30.07.2007 matter referring fairness of domestic enquiry was decided by reasoned and details order and it was hold that allegation of assault and abuses by the worker to the Branch Manager and domestic enquiry was neither fair nor as per principles of natural justice. Any order including punishment to the worker on basis of above enquiry was held not tenable Management was directed to come with the evidence if they so desire establishing the charge.

3. It appears from the order dt. 29.12.2005 that award was directed an signed and was sent to the Govt. of India, Ministry of Labour, Sharam Shakti Bhawan, Rafi Marg, New Delhi for information and necessary action. Publication of award was received. Further it appears from the order sheet dt. 28.07.2009 that the petition along with photostat of certified copy of the order dt. 27.04.2009 passed in L.P.A No. 213 of 2009 by the Hon'ble High Court, Patna had been filed on behalf of the workman Sri Shatrughan Prasad Sah with a prayer to answer to reference in the light of direction of the Hon'ble High Court, Patna in L.P.A No. 213 of 2009. The Hon'ble High Court, Patna remanded back for deciding the dispute.

4. It appears that earlier award was given on 29.12.2005 directing the management (Bank) to reinstate the workman *w.e.f.* 28.11.1985 in bank service and regularies his service in the subordinate staff cadre of the bank service with entire benefits admissible to his rank and post within a period of one month from the date of publication of the award.

5. The order passed in C.W.J.C. No. 4814 of 2006 is not available on the record. But from the petition filed by the workman Shatrughan Prasad Sah, from order sheet dt. 28.07.2009 it appears that management bank was preferred C.W.J.C. No. 4814 of 2006 against the award dt. 29.11.2005 and award passed by this tribunal was set-aside by the single bench of the Hon'ble High Court, Patna. Then workman preferred L.P.S. No. 213 of 2009 in the Hon'ble High Court which was disposed of by the Hon'ble High Court, Patna on 27.04.2009 with a direction for remitting back to this tribunal for deciding the main issue on the point of working days in the last preceding 12 months.

6. Photo copy of the certified copy of the order passed by the Hon'ble High Court, Patna in L.P.A No. 213 of 2009 has been filed. From perusal of the order it appears that

from the award dt. 29.12.2005 it is clear that the appellant sought an adjudication on the issue "whether the action of the management of Saran Kshetriya Gramin Bank Saran is terminating the services of Shri Shatrughan Prasad Sah, Sweeper-Cum-Messenger is justified? If, not what relief the workman is entitled to?" The management denied relationship of employer and employee as well as existence of any Industrial Dispute between the parties. Tribunal had decided in favour of the workman by holding that the attendance sheet from December, 1983 to Feb. 1985 show that workman worked in the Bank during the relevant period and although he could not produced copy of attendance sheet till the date of his retrenchment. Further it appears that matter has been remitted back to this tribunal for deciding the main issue as to whether the workman had worked for more that 240 days in the last preceding 12 months. There is no dispute that last preceding 12 months period would have to be counted backwards from 27.11.1985. It has also stated that it goes without saying that the parties will be at liberty to advance all their arguments and points including the points whether in view of Article 14 and 16 of constitution of India, a direction for regularization of service can be given by the tribunal even if it is found that the workman a casual daily wagger was wrongly retrenched. Reinstatement and regularization may have different connotation in law. The Tribunal shall decide the issue if raised before if by the management in accordance with law.

7. Written statement has been failed on behalf of the both the management and workman.

8. In the written statement of the management it has been stated that there is no relationship of employer and employee between the management of Saran Kshetriya Gramin Bank and the said Sri Shatrughan Prasad Sah and as such no Industrial dispute exists between the parties.

Sri Shatrughan Prasad Sah was never an employee of the bank and he is not a worker of the within the meaning of section-2(00) of the I.D. Act. As such claim of Sri Shatrughan Prasad Sah is not entertainable and fit to be dismissed. Sri Shatrughan Prasad Sah was intermittently given contractual work by the branch manager as per need on a particular day in between December, 1981 to November, 1985 on payment of Rs. 2.31 to 8.52 per day. Thereafter he did not offer himself for such work on any day in the bank. As such the claim of the workman in any event is stale and not maintainable in view of voluntary abandonment from even the contractual work of the bank. He was not under any disciplinary control of the bank for the period he did the aforesaid contractual work in the bank. Claim of Sri Shatrughan Prasad Sah that he worked for 240 days in a calendar year is emphatically denied by the management. During the period the services of Sri Shatrughan Prasad Sah was taken, there was not sanction of vacany in the branch and at present also there is no sanctioned vacancy. He was never appointed by the bank for any post in the

bank and as such his claim is not maintainable. The appointment in the bank is made according to the rules as per laid down recruitment policy following articles 14 & 16 of the constitution of India and that too when a post is sanctioned.

Shatrughan Prasad Sah was never appointed in the bank, the question for termination of his service does not arise.

In any case raising an Industrial Dispute after a lapse of 15 years is hopelessly barred by limitaion/dela, latches and as such the claim is fit to be dismissed on this ground. It has been stated that the witnesses and/or documents in support of this written statement will be produced before this Hon'ble Tribunal at the time of hearing of this case.

9. In the written statement on behalf of the workman it has been stated that he was appointed by the authorities of the Gramin Bank in the year 1981 on the post of Sweeper-cum-Messenger on the pay scale of Rs. 60/- P.M. It has also stated that in the year 1981 a branch of Saran Kshetriya Gramin Bank was started and there was vacancy in it for the post of Sweeper-cum-Messenger. The workman applied for the said post and having found suitable was appointed on the pay scale of Rs. 60/- per month. Payment has been made to him in the said scale till 22.06.1982 and thereafter he was allowed Rs. 3/- per days as wages from 23.06.1982 as per instruction of the Head Office *vide* letter No.-82/69/2/56. He was removed from the service on 28.11.1983 without any notice and without any opportunity of hearing.

10. Since earlier Award had been passed which was set-aside and this tribunal has only to decide the matter in the light of the direction given in the L.P.A has mention earlier.

11. In reply to the written statement of the management, workman had stated that he continuously worked till 27.11.1985 and all of sudden on 28.11.1985 he was removed from service.

The main points for consideration whether the workman worked for 240 days in the last preceding 12 months backward from 27.11.1985.

12. It appears that on 08.09.2009 management filed written statement after remand of the matter from the Hon'ble High Court stating therein that on remand besides other following issues are involved in the case.

- (i) "Whether the workman has discharged his onus of proving that he had worked for 240 days in the last preceding 12 months which would be counted backwards from 27.11.1985?"
- (ii) "Whether any direction can be issued by the Tribunal in the present reference for regularization of service even if it is found that the workman, a casual daily wagger was wrongly retrenched?"
- (iii) "Whether the workman concerned can not claim to be retrenched in view of sub-section-(bb) of section-2(oo) of I.D. Act?"

It has been stated that it is settled law that the onus is upon the workman to prove that he worked for 240 days preceding alleged termination. In view of the decision reported in (2002) 35 SCC page 25 followed by (2002)8 SCC page 400.

It has also been stated that even in case of finality of non-compliance of section-25 the direction of reinstatement in absence of work/post ought not be granted as held in (2005)12 SCC 25 and in any case there could be no order of regularization in view of the decision reported on (2005)7 SCC 100. No back wages be awarded to the workman even in case of illegal termination.

It has also been submitted that workman in no case can claim regularization in the bank as per decision (2007)3 SC 417. It has been submitted that Uttar Bihar Gramin Bank is a public sector bank and no regular appointment could be made in the bank without following article 14 & 16 of the constitution of India. No such decision have been filed as stated in the written statement dt.-08.09.2009.

13. Further in written submission on behalf of the management on 12.02.2014. The same points has been raised as stated in the written statement dt. 08.09.2009.

14. Written statement has been filed on behalf of the workman on 12.02.2014 stating therein the subject matter for adjudication is confined is two issues.

- (i) First issue relates to working for a period of 240 days in 12 calendar months preceding 27.11.1985.
- (ii) Second issues relates to the direction of the Hon'ble Tribunal for regularization of the service of the workman in view of Article 14 & 16 of the Indian constitution of India.

The first issue is required to be examined in the light of documentary and oral evidence of the witnesses. During the deposition of the workman as W.W.-1, he stated that he worked with the bank from 16.12.1981 to 27.11.1985. Copy of attendance sheet is being enclosed for ready reference. The attendance sheet amply proves that the workman has worked with the Bank from 01.12.1983 to 27.11.1985. Accordingly the first issue is substantiated.

As regards second issue, it is submitted that the Regional Rular Bank were in corporated as per provision of RRB Act, 1976 with three Shareholders-Central Govt. Sponsor Bank and State Govt. with 50%, 35% and 15% in the total authorized share capital of Rs. 1 Crore. Regional Rural Bank were opened having no uniformity in pay structure of officers and clerical staff. Their pay structures differed from state to state. There was no permanent subordinate staff. Members of class IV staff had been engaged as part time sweeper-cum-messenger with wages @ Rs. 2/-, Rs. 3/- per day.

After 1980, NABARD issued guidelines for having a permanent messenger at Head Office and in branches

having over is 30 Lac of business. Demanding equal pay for equal work, writ petition (civil) No.- 7149-50 of 1982 & 1984 were filed before the Hon'ble Supreme Court of India. The Hon'ble Apex Court directed to Union Govt. to constitute a National Industrial Tribunal with a retired Chief Justice of a High Court as its Presiding Officer who gave award on 30.04.1990, known as National Industrial Tribunal Award (NIT AWARD).

According to the all the officers and clerical employees were brought on par with the pay scale of sponsor Banks and daily rated, part-time-messenger were regularised as full time regular messenger. Some paras of NIT AWARD are relied upon for the sake of regularization. "In the case of Jaipal Vs State of Haryana, AIR 1988 SC 1505, the Supreme Court held that "the doctrine of equal pay for equal work has been implemented by this court in Ranbir Singh Vs Union of India, Dharendra Chomoli Vs State of U.P. and Surendra Singh Vs Engineer-in-Chief CPWD. In view of their authorities, it is too late in the day to disregard the doctrine of equal pay for equal work on the ground of an employee being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee."

Para No.-4, 140 (page-337) of NIT Award.

Para No.-4, 141, 4.142, 4.143 (Page 338) of NIT Award.

Para Nos 4.405 (Page 446), 4.407 (page 447) & 4.410 (page 449) of NIT Award. Last para reads as under:—

"The management can not extract full time work and even beyond the working hours from the so called part time messengers by merely showing them in the acquaintance rolls as part-time employees paid on either daily wages; or some other basis or on some proportionate basis. Their services shall be regularized with effect from the date of their continuous engagement. If deemed necessary it will be opened to the Govt. or the RRBs as the case may be, to sanction the required number of posts to accommodate the writ petitioners and all those belonging to their class."

Under the foregoing, the workman is entitled for regularization of his services as a full time messenger/peon under the subordinate cadre.

It has been stated that the management terminated the service of the workman in violation of section-25F of the I.D. Act and orally appointed another person Awadhesh Prasad Singh who was regularised as a messenger/peon. Photostat of attendance sheet right from December, 1983 to January, 1985 has been filed. Photostat Attendance sheet of Messenger-cum-Sweeper Shatrughan Prasad Sah has also been filed along with time to arrival and departure for the period Mach 1985 to November, 1985 that has not been controverted by the management....

FINDINGS

15. After the order on fairness of domestic enquiry Six witnesses have been examined on behalf of the management and Shri Shatrughan Prasad Sah witness on behalf of the workman. Witness examination on behalf of the management M.W.-1 (Mithilesh Kumar), M.W.-2 (Indra Narain Singh), M.W.-3 (Dilip Kumar Sinha), M.W.-4 (Raghunath Prasad Yadav), M.W.-5 (Dinesh Kumar), M.W.-6 (Awadhesh Kumar Singh). Witness examined on behalf of the workman W.W.-1 Sri Shatrughan Prasad Sah himself.

16. It is pertinent to note that evidence is to be considered in the light of judgement passed on 27.04.2009 in L.P.A. No. 213 of 2009 in which it has been stated that matter remitted to the Industrial Tribunal for deciding the main issue as to whether the workman had worked for more than 240 days in the last preceding 12 months. There is no dispute that last preceding 12 months period would have to be counted backwards from 27.11.1985.

17. M.W.-1 (Mithilesh Kumar) in this respect has stated that he was posted in Nandanpur Branch of Saran Kshetriya Gramin Bank during the period March 1984 to June 1986 and workman was posted there. He has stated about the report of enquiry committee which was submitted and workman left to attend the duty. Later on he arrived and received payment through vouchers which has been marked as Ext.-M/8. He further stated that he was daily wages worker. He further stated that payment was being made from Monday to Saturday. On cross-examination he has stated that prior to joining of this witness which was March 1984, workman worked in the branch and no complaint was received against him. He further stated that since 1981 to 27.11.1985 workman was in the bank. During interval when the workman did not remain present then some other did the work. From his evidence it appears that workman was working since 1981 to 27.11.1985.

18. M.W.-2 (Indra Narain Singh) this witness was enquiry officer in his he has stated that part time messenger used to be appointed as per requirement. That was according to circular marked as Ext.-M/10, 11 & 12.

19. M.W.-3 (Dilip Kumar Sinha) was also a member of enquiry committee. He has not stated anything relevant to be considered in the light of judgement of aforesaid L.P.A.

20. M.W.-4 (Raghunath Prasad Yadav) this witness is in respect of the enquiry. Nothing is to be gathered in the light of decision of L.P.A.

21. M.W.-5 (Dinesh Kumar) he has stated nothing relevant to be considered.

22. M.W.-6 (Awadhesh Kumar Singh) he has stated that he was appointed as messenger. This witness was appointed on 29.11.1985.

23. W.W.-1 (Shatrughan Prasad Sah) himself he has stated that he was working in Saran Kshetriya Gramin Bank,

Nandanpur Branch since 16.12.1981. From the period 16.12.1981 to 22.06.1982 he was getting Rs. 60/- per month as his pay. Thereafter from the period 23.06.1982 to 25.09.1982 he was getting remuneration @ Rs. 3/- per day. Thereafter from the period 26.09.1982 to 01.01.1984 he was getting Rs. 5/- per day. From 02.01.1984 to 27.11.1985 he was getting Rs. 8.52/- per day. On 28.11.1985 he was removed from the service. He learnt on 16.11.1985 that in his place Awadhesh Kumar Singh may be appointed. He has stated that on 27.11.1985 he was on duty on the bank. In cross-examination he has stated that he was getting Rs. 60/- per month from 16.11.1981 to 22.12.1982. Thereafter he was getting remuneration it has not been challenged that this witness was not working from the period 16.12.1981 to 27.11.1985.

24. Ext.-M/3 is the circular/letter sent by under secretary to the Govt. of India to the Chairman All Regional Rural Banks on 28.05.1981 in which it has been stated that Regional Rural Bank was advised that keeping in view the local conditions, messengers may be appointed in the Regional Rural Banks on purely part time and daily wages basis. Ext.-M/8 in the voucher by which payment was made to Shatrughan Prasad Sah on 22.02.1986. Ext.-M/10 is the circular dt. 27.09.1980 that daily wage employees may be extended all benefits such as provident fund etc for which they are eligible under the law. It appears that attendance sheet of messenger has been filed on behalf of the Shatrughan Prasad Sah from the period December 1983 to 27.11.1985. It also appears that attendance of Shatrughan Prasad Sah has been filed duly counter signed by the bank officers. It appears that arrival time was 10.30 A.M. and departure time was 5.30 P.M. It appears that days we are counted in the presence of both the parties and it appears that Shatrughan Prasad Sah worked since 28th November, 1984 for 03 days, in the month of December, 1984 for 23 days, in January, 1985 for 26 days, in February, 1985 for 24 days, in March, 1985 for 25 days, in April, 1985 for 26 days, in May, 1985 for 27 days. In June, 1985 for 25 days, July, 1985 for 27 days, August, 1985 for 26 days, September, 1985 for 25 days, October, 1985 for 23 days, in November, 1985 for 23 days total 303 days. As such the workman had worked for 303 days which is much more than 240 days in last preceding 12 months. Last preceding 12 month period has been counted backward from 27.11.1985.

25. The order sheet dt. 10.12.2013 has been quoted as follows:—

"Heard Mr. B. Prasad, President, Bihar Provincial Gramin Bank Employees Association on behalf of the workman and Mr. Om Prakash on behalf of the management (Bank) and perused the record.

Mr. B. Prasad demonstrated Photo Stat of the attendance sheet of the workman from the period November, 1984 to 27th November, 1985 with the counter signature of the manager of the bank.

Representative of Bank also perused the record and calculated the working days of the workman during the above mentioned period which comes to 303 days. But the expressed his inavailability to say anything further more and asked for time for verification of the attendance sheet from original by the next date.

The time is granted to the management as last chance, because matter is very old. Record put up on 07.01.2014."

26. Workman always remained present in his duty accept holidays and Sunday. No other argument has been advanced and the argument of the workman had not been controverted. In that view of the matter the action of the management of Saran Kshetriya Gramin Bank, Saran in terminating the services of Sri Shatrughan Prasad Sah, Sweeper-cum-Messenger is not justified because immediate after his removal Awadhesh Kumar Singh was appointed by the messenger. This Awadhesh Kumar Singh is in service of the management who has stated that he was appointed as messenger in the said branch of Saran Kshetriya Gramin Bank Saran because he learnt that post is vacant and he applied for his appointment. In this view of the matter the award is answered that termination of Shatrughan Prasad Sah Sweeper-cum-messenger was not justified and he worked for more than 240 days counted backward from November-1984 to November, 27.11.1985 and Shatrughan Prasad Sah is entitled to get all consequential benefits.

This is my award accordingly.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1422.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट संदर्भ संख्या 11/1981 (एम पी सं 24/1985) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/07/2015 को प्राप्त हुआ था।

[सं एल-22013/1/2015-आईआर (सी-II)]

मो० जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1422.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus. Tribunal-cum-Labour Court, Hyderabad, Ref. No. IT/ID/11/1981 (M.P. No. 24 of 1985) as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of SCCL and their workmen, which was received by the Central Government on 07/07/2015.

[No.L-22013/1/2015-IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CHAIRMAN INDUSTRIAL TRIBUNAL-I, AT HYDERABAD

Present: Sri P.V. Ramana Rayalu, B.Sc., L.L.M., M.B.A.,
District & Sessions Judge
(Chairman)

M.P. No. 24 of 1985

IN

I.D. No. 11 of 1981

Dated 11th day of June, 2015

BETWEEN

Akula Rajam

S/o Mallaiah

Ex-Coal Filler, KK-2 Incline

Mandamarri Division

Singareni Collieries Company Limited,

P.O. Kalyan Kani Post, Adilabad District

.....Petitioner

AND

M/s Singareni Collieries Company Limited

Rep by its Addl Chief Mining Engineer,

Mandamarri Division

P.O. Kalyan Kani Post, Adilabad District

.....Respondent

This M P is coming up before me for final hearing on 09.06.2015 in the presence of Sri William Burra Advocate for the petitioner, and Sri P A V V S Sharma Advocate for the Respondent having stood over the same for consideration, this Court passed the following:

AWARD

1. This petition was filed under Sec. 33 A of the Industrial Disputes Act, 1947 praying the Court to direct the Respondent M/s. Singareni Collieries Company Limited to re-instate the petitioner in service with full back wages and all other attendant benefits etc.

2. The material averments of the petition are that the petitioner was appointed on 07.10.1976 as Coal Filler in the Respondent Company and certain charges were leveled against the petitioner *vide* charge sheet dt: 07.07.1983 stating that he instigated the co-workers to go on illegal strike. An explanation was submitted by the petitioner on 10.07.1983 denying the charges. An enquiry was conducted into charges and erroneously the enquiry officer found charges against the petitioner proved and ultimately petitioner was dismissed on 29.01.1984 from service. The

Industrial Dispute I D No. 11/1981 was pending in this Tribunal regarding penal cut of wages of employees of KK2-Incline by the Respondent. The petitioner was one of the employees whose wages were sought to be cut by the Respondent. The above dispute was pending on the date of dismissal of the petitioner. The respondent has not, paid wages under Sec. 33 (2) (b) of the Industrial Disputes Act or obtained approval of the action sought. So the dismissal is illegal for violation of mandatory provisions of Sec. 33 (2) (b). Hence the petition was filed.

3. The Respondent has resisted the petition and filed the counter contending *inter-alia* that the charge sheet dated: 05.07.1983 was served for misconduct under Company's Standing Order Nos. 16 (1), (9) and (19) of specific charges that he resorted to illegal strike and insisted his co-workers to strike. A Domestic Enquiry was held in a fair manner and the petitioner fully participated and he was given full opportunity to defend himself and on consideration of evidence on record including of the petitioner, the enquiry Officer had given report holding the petitioner was guilty of the charges. The petitioner was rightly dismissed with effect from 29.01.1984. The President Tandoor Coal Mines Limited Union raised a dispute before Assistant Labour Commissioner for the dismissal of the petitioner and demanded for reinstatement and conciliation Officer considered the case and held that dismissal of workman was justified and the same was communicated in letter dt: 15.12.1984. The Industrial Dispute covered by I D 11 of 1981 is in no way concerned with the present dispute and the wages deducted from the workers were already refunded in 1981 itself and there was no Industrial Dispute at all. Hence Sec. 33 of I D Act does not attract. Hence prayed for dismissal of the petition.

4. Since it is a very long pending case it has some history of proceeding. This Tribunal passed the award on 18.08.1986 in M P 24 of 1985 holding that complaint under Sec. 33 A is valid and worker is entitled for re-instatement with full back wages and other attendant benefits. The Respondent preferred Writ Petition No 323 of 1987 questioning the said award. Hon'ble High Court by the order dated: 08.04.1993 remanded the matter to this Tribunal for fresh disposal and the petitioner herein should be continued in service till disposal of the dispute by this Industrial Tribunal and he shall not be removed from service. Hon'ble High Court in its order mentioned that during the pendency of the Writ Petition the petitioner herein was re-instated and 50% of the back wages were deposited by the Management and they were paid to workman. The Hon'ble High Court also further observed that the question relating applicability of Sec. 33-A was not pressed.

5. This Court disposed of M P 24 of 1985 again on 08.11.1993 holding that the domestic enquiry was fair and proper and closed the matter on consideration of the material *i.e.*, the evidence of RW 1 enquiry Officer and Exs. R1 to R10.

Aggrieved by the same a Writ petition No. 1492 of 1994 was filed by the petitioner herein questioning the correctness of the same. Hon'ble High Court by the Order dt: 07.07.2003 allowed the petition setting aside the order dt: 08.11.1993 and M P 24/1985 was allowed. Against such order of the Hon'ble High Court, Management preferred Writ Appeal No 1560 of 2003. Hon'ble High Court in Writ Appeal by the order dt: 28.11.2011 allowed the Writ Appeal and M P is restored to file of this Tribunal, to conduct enquiry into the charge made against the workman by its duly providing opportunity to both sides to lead evidence and on that basis to conclude the exercise. So the matter has again came back to this Tribunal. The petitioner has not adduced any evidence.

6. Before disposal of the M P 24 of 1985 the Management examined R W 1 J Shyam Babu the Enquiry Officer and marked Exs.-R 1 to R 10. After remand of the case by the Hon'ble High Court by the order in Writ Appeal, Respondent examined one witness and got marked two documents. This evidence shall be read as RW2, though it was mentioned on record as RW 1 again. Similarly 2 documents were got marked as Ex R 1 and R2, which shall be read as Ex R11 and Ex R12 because earlier already 10 documents were marked.

7. During the course of arguments it was submitted by the Respondent's Counsel that the petitioner was retired from service on 01.06.2015 on superannuation and enjoyed all benefits of reinstatement and the matter is left only with respect of 50% of back wages unpaid and the Hon'ble Tribunal may decide about the finding of the enquiry and pass necessary orders with respect to the remaining balance of back wages.

8. The Learned Counsel for the petitioner submitted that the petitioner is entitled for back wages and his termination is illegal and not justified and the Respondent has failed to justify the dismissal of the petitioner.

9. Now the point for consideration is.

"Whether the dismissal order is justified if not what is appropriate order that has to be passed".

10. The Learned Advocate for the petitioner mentioned much in his written arguments about the applicability of Sec. 33 (2) (b) of Industrial Disputes Act, 1947 and violation of principles of natural justice while conducting enquiry and the application of Sec. 33-A of Industrial Disputes Act and relied on the following judgments:

1. Management of English Electric Co. of India And V. Manohara Rao & Others reported in 2001 1 LLJ Page 185, on the proposition that Section 33 and 33A will be attracted during the Pendency of any proceedings in respect of Industrial Dispute.
2. Union of India and Others Vs. Mohd. Ramzan Khan reported in 1991 1 LLJ Page 29, on the factum that non-supply of enquiry report would amounts to violation of rules of natural justice.

3. Ramulu G Vs. Depot Manager, APSRTC, Gadwal reported in 1999 3 LLJ (Supl.) Page 1036, on the same point.
4. General Manager (Projects) 21, Incline Singareni Collieries Co. Limited Vs. Industrial Tribunals, Hyderabad reported in 2001 3 LLJ (Suppl.) page 197, regarding the application of Sec. 33-A of ID Act.

11. It is to be noted that with regard to application of Sec. 33-A and violation of principles of natural justice were already decided by the Hon'ble High Court in the 2 Writ petitions, so they need not be gone into again.

12. On the other hand the Learned Counsel for the Respondent relied on the following judgments:

1. Union of India and Others Vs. Mohd. Ramzan Khan 1991 on Supreme Court Cases page 588, on the point that Article 311 and first proviso is prospective application only.

2. Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja reported in 2008 (10) skilled page 101, this is also regarding principles of natural justice to be followed during the Domestic enquiry.

13. The Hon'ble Supreme Court observed that non furnishing of enquiry report *ipso facto* would not result in proceedings being declared null and void and order of punishment non-est and non affective. It is for the delinquent employee to plead and prove the same that non supply of such report caused prejudice and resulted in mis-carriage of justice.

14. Now, I would like to consider whether the Respondent is able to justify the dismissal of the petitioner.

15. RWI Enquiry Officer stated the he was appointed as an Enquiry Officer to conduct enquiry against the petitioner. Ex.-R1 is charge sheet which was acknowledged by the petitioner under Ex.-R2 and submitted explanation in Ex.-R3 and Notices were sent to the petitioner from time to time under Ex.-R4 to Ex.-R8 and the workman has attended the enquiry which was conducted for more than 5 days and Ex.-9 is the Enquiry proceedings and he read over the contents of the charge and explained to the workman and explained him in telugu. He further stated, full and fair opportunity was given to the petitioner and Management witnesses were cross examined by petitioner and petitioner also examined two witnesses on his behalf and he submitted his enquiry report under Ex.-R10. RW2 (RW1 after remand) in his chief examination affidavit mentioned about the facts and question about the non-applicability of Sec. 33 and Sec. 33-A. He is not the person having personal acquaintance with the enquiry conducted by RW1. This witness was examined by the Respondent because the enquiry officer J. Shyam Babu was no more by the time of remand of the matter to this Tribunal for 2nd time.

16. The petitioner has not examined himself or examined any other witnesses before this Tribunal. The main charge

is concerned that on 03.06.1983 the petitioner was met with mine accident on duty and he was got treated and admitted in area Hospital at Bellampally twice and also treated at K K Dispensary and the petitioner was complaining pain in his foot and on examination it was revealed that he did not have any bone injury but he continued his treatment in the local dispensary up to 01.07.1983 and lastly on 02.07.1983 he was referred to specialist at Area Hospital Bellampally and Medical Board examined and declared him fit to resume duty. On 04.07.1983 at the beginning of 2nd shift and again on 1st shift of 07.07.1983 he came to mine and incited and instigated other coal fillers of the shift to go on illegal and lightening strike on the pretext that he was not able to work under ground and that surface job had to be given to him.

17. The Enquiry Report Ex.-R10 Reveals that MW 1 to 6 were examined and the delinquent and other two witnesses were examined for petitioner and on consideration of the said material he found that the petitioner was referred twice to Area Hospital at Bellampally and declared fit to resume duty and he was normal, but he requested for light job on the plea that he was not in a position to do underground job and accordingly Shri S V Krishna Rao came to the Office on 04.07.1983 and agreed to give light job for ten days and there was no point for the petitioner to refuse to work and he insisted coal fillers to go on illegal strike by seeking their help to pursue his case. The witnesses of the petitioner in cross examination stated that the petitioner sought for help to demand and they demanded management to provide light surface job to the petitioner and went on strike. The petitioner should have tried for redressal of his grievance through legitimate procedures like grievance procedure and conciliation etc. but he did not try in that regard and on contrary instigated coal fillers to go on illegal strike. So, he held the petitioner was guilty of misconduct and the charge was proved.

Ex R9 is enquiry proceedings with statements of the witnesses including the petitioner and his witnesses.

18. It is to be noted that on 03.06.1983 the petitioner met with an accident on duty and he was referred to hospitals and on 02.07.1983 lastly he was referred to Specialist area hospital at Bellampally for examination and advise. Medical board declared him fit to resume duty. On 04.07.1983 he wanted light duty on surface and expressed his inability and failed to work in mine and he sought the help of his colleagues to insist the Manager to give surface work. According to under Manager KK-2 incline Management witness Additional CME agreed to give 10 days surface job but the petitioner did not head and coal fillers went away on strike and there was loss of production of work Rs. 62,800/- and 118 workmen locked out and similarly on 07.07.1983 again it was happened.

19. It is to be noted that the Respondent has to manage huge number of workmen and redress their grievances then and there, if possible, to see that the work was conducted

in a smooth way without any hindrance. Admittedly, the petitioner met with an accident and sustained injury. There is no bony injury. It cannot be said that the petitioner was not having any pain in his foot. The Doctor may have given fitness certificate on examining the foot of the petitioner physiologically. It is the person who knows about the pain that suffers. The Management must be a hit tactful by providing for some more days to the petitioner the surface work. Seeking the help of the co-workers to support his request to place before the Management, is not illegal. In fact he did it like that. The Management could have solved the problem then and there. It appears in the course of discussion, both were adamant and the situation become worse. Both parties should be blamed for the situation but not the petitioner alone. The Manager or officer concerned is aware of the consequences. Had he acted tactfully by giving some light work to the petitioner on surface for few days or few days more what he asked the situation would be different. If, the workers were only adamant, then it can be said that the petitioner was guilty of insisting other workers to go on strike. The management has to solve the problems then and there which was not done in this case properly. So the petitioner alone cannot be blamed, for that. In such case dismissal of the petitioner cannot be said to be justified.

20. The Respondent has not followed the prescribed procedure under Sec. 33(2) and so dismissal order become in valid. On any of the two grounds, the dismissal order is not sustainable.

21. Since during the pendency of the proceedings, basing on the orders of the Tribunal the petitioner was re-instated and continued his services and retired peacefully on 01.06.2015 and he was also paid 50% of the back wages *i.e.* for the period between the date of dismissal and the date of reinstatement, it is proper to order payment of balance of 50% of the wages also to the petitioner by the Respondent. I answer the point accordingly, holding that the dismissal order is not justified.

In the result, the award is passed allowing the petition, setting aside the dismissal order and the Respondent is directed to pay balance 50% of the unpaid back wages to the petitioner.

P. V. RAMANA RAYALU, District & Session Judge
(Chairman)

APPENDIX OF EVIDENCE

<u>Witness examined for petitioner</u>	<u>Witness examined for Respondent</u>
NIL	RW1: J. Shyam Babu RW2: Edara James (After Remand)

Documents marked for petitioner

NIL

Documents marked for Respondent

ExR1	Charge Sheet issued to the petitioner dt.: 07.07.1983
ExR2	Acknowledgement to Ex.R1
ExR3	Explanation submitted by the workman
Ex R4 to R8	Enquiry Notices sent to the petitioner-workman
ExR9	Enquiry proceedings
ExR10	Enquiry Report
ExR11	Procedings of the re-instatement (after Remand) order Dt.: 27.11.1986
ExR12	Certified copy of order Dt. 08.11.1993 in MP No. 24 of 1985

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1423.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एनएलसील के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (संदर्भ संख्या 47/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/07/2015 को प्राप्त हुआ था।

[सं. एल-22012/29/2014-आईआर (सीएम-II)]

मो० जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of M/s. NLC Limited, Corporate Office, and their workmen, received by the Central Government on 07/07/2015.

[No. L-22012/29/2014-IR(CM-II)]

Md. ZAHID SHARIF, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI****Wednesday, the 6th May, 2015****Present: K. P. PRASANNA KUMARI,
Presiding Officer****Industrial Dispute No. 47/2014**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and Two Others and their workman)

BETWEEN

1. The General Secretary : 1st Party/1st Petitioner
NLC Contract & Indcoserve Union
Workers Progressive Union
MU Su Mani Arangam,
Block-17 Neyveli-607801
2. The General Secretary : 1st Party/2nd Petitioner
NLC Anna Indcoserve & Union
Contract Thozhilalar
Sangam (ATP) 2nd Street
Therruvellore, Vadakkuvellore
Post Neyveli-607802
3. The General Secretary : 1st Party/3rd Petitioner
NLC Anna Contract Worker's Union
Union No. 8, Main Road
Neyveli-607802
4. The General Secretary : 1st Party/4th Petitioner
NLC General Contract Union
Workers Staff Union (CITU),
CITU Office, Near Central
Bus Stand Block-24,
Neyveli-607801
5. The General Secretary : 1st Party/5th Petitioner
NLC Pattali Oppandha Union
Thozhilalar Sangam (PTS)
D-10, K.N. Subburaman Road,
Block-19 Neyveli-607803
6. The General Secretary : 1st Party/6th Petitioner
Neyveli National Contract Union
& Indcoserve Workers Union
(INTUC) D-39, Anna Road,
Block-25 Neyveli-607803
7. The General Secretary : 1st Party/7th Petitioner
NLC Thozhilalar Ottrumai Union
Maiyam (AITUC) 36, Haja
Lane, Gangaikondan
Neyveli-607802

8. The General Secretary : 1st Party/8th Petitioner
NLC Indcoserve Thozhilalar Union
Uzhiyar Sangam (ITUS),
No. 48/117A,
Akilandagangapuram
Ammeri (Post)
Neyveli-607802
9. The General Secretary : 1st Party/9th Petitioner
NLC Oruginaintha Oppandha Union
Thozhilalar Sangam (LLFC)
D-14, Alwaye Road,
Block-27 Neyveli-607803

AND

1. The Chairman & : 2nd Party/Ist
Managing Director Respondent
Neyveli Lignite
Corporation Ltd.
Corporate Office
Neyveli-607801
2. The General Secretary : 2nd Party/2nd
NLC Builder's Association Respondent
of India No. 104, MRK Salai,
Indira Nagar Neyveli-607801
3. The General Secretary : 2nd Party/3rd
NLC Contractor's Respondent
Association No. 46,
PTR Mananan Nagar
Gandhi Gram Post
Neyveli-607801

Appearance:

For the 1st Party/1st, 2nd, : M/s Ajoy Khose,
4th 5th 7th & 8th Advocates
Petitioner Unions

For the 1st Party/3rd, : Set Ex-parte
6th & 9th
Petitioner Unions

For the 2nd Party/1st : M/s N.A.K. Sarma,
Respondent Advocates

For the 2nd Party/2nd : Set Ex-parte
Respondent

For the 2nd Party/3rd : Set Ex-parte
Respondent

AWARD

The Central Government, Ministry of Labour & Employment, *vide* its Order No. L-22012/29/2014-IR (CM-II) dated 03.06.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the demand of the unions for maximum bonus of 20% and ex-gratia from the management of M/s NLC Ltd., Neyveli is legal and justified? If not, to what relief the workmen are entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 47/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively.

3. Though the petitioners have entered appearance and some of them have filed Claim Statement also, none of them have shown any interest in following up with the matter. So far they have not produced any documents to support the case. In spite of repeated postings the petitioners were not ready to proceed with the enquiry also. So it is to be assumed that they are not interested in pursuing the matter. In the absence of any material in support of the case of the petitioners, the finding in the reference can be against them only.

Accordingly the reference is answered against the petitioners. An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Unions	: None
For the 2nd Party/1st Management	: None
For the 2nd Party/2nd Management	: None
For the 2nd Party/3rd Management	: None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
	Nil	

On the Management's side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14 की धारा 17) के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 68/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/07/2015 को प्राप्त हुआ था।

[सं. एल-22012/336/1999-आई.आर.(सी एम-II)]
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 07/07/20015.

[No. L-22012/336/1999-IR(CM-II)]
Md. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/68/2000

Presiding Officer: SHRI R.B. PATLE

Shri Premlal,
Village Kachana,
PO Saddu,
Distt. Raipur (MP)

...Workman

Versus

District Manager,
Food Corporation of India,
District Office, Kutchery Chowk,
Raipur (MP)

...Management

AWARD

Passed on this 7th day of May, 2015

1. As per letter dated 29-2/7-3/2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/336/99/IR(CM-II). The dispute under reference relates to:

"Whether S/Shri Premlal, Itwari Yadav, Krishna Jhanghel, Dulay Ram, Papu Banjaray, Keshav Patel, Surech Jhanghei and Lachi Ram Sinha are workmen under Section 2(s) of Industrial Dispute Act, 1947? If so, whether their termination from the services w.e.f. 1992 and not providing alternative employment is justified? If not, to what relief the workmen are entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/4. Cases of 1st party workman is they were working as casual labours at Khapa depot of F.C.I. During the year 1987 to 1990 and thereafter from 1990 to 1922, they were

working under mate system, direct payment system. They were working with devotion. Their services were terminated without notice. They were not absorbed in other depots of FCI. Assurance was given to them. Ist Party workman had objected to absorption of some of the employees after closing of Khapa Depot. IInd Party was annoyed by their protest. Ist party workman sought redressal of their grievances through Union. As per letter dated 20-4-97, meeting was held in the matter as IInd party refused to absorb workman, new depot was constructed at Ajuni near Dhamtari. 35 employees were deployed at new depot. Despite of assurance given to the workmen, they were not absorbed in the new depot. Letters of Union were not replied.

3. It is contention of workman that they were continuously working from 1987 to 1992 to Khapa Depot. Their services are terminated in violation of Section 25-F, G, H of ID Act. On such ground, workman prays for their reinstatement with back wages.

4. IInd party had filed application for better particulars requesting workman to furnish their name, father's name, husband's name, name of the contractor under whom they were working, appointment letters, name of the mate and period of working, particulars regarding payment directly made to them.

5. It is seen that application was opposed by Union. Thereafter case was fixed for evidence. Workman failed to adduce evidence. After hearing argument, case was fixed for award.

6. It was noticed that proper stages were not followed in the matter. Case was not fixed for filing Written Statement. Therefore the case was fixed for filing Written Statement.

7. IInd party filed Written Statement on 20.6.2014 opposing claim of the workman. It is submitted that FCI is formed under FCI Act 1964. It deals with imports, procurement, storage and distribution of the food grains throughout the country. The work of handling transport at various depots was assigned to the contractors. The Khapa depot was closed in 1989. The contentions of workman that they were continuously working from 1987 to 1992 is false. IInd party has further contented that as per notification dated 1-11-90, under Section 10 of CL(R&A) Act, prohibited employment of contract labour in 16 depots of MP. As per notification dated 12-4-91, direct payment system was introduced. FCI depot at Khapa was not covered by Notification dated 1.11.90. The contract system in Khapa depot was not abolished. Mate system was still operating in said depot till 31.12.93. As per circular dated 5.12.94, workers engaged by mate in other food storage depots were upgraded from mate system to direct payment system. It is reiterated that the workmen were not working in Khapa depot after its closure in 1989. Any contractors were not engaged after closure of depot. The claim of

workman is false. On such ground, IInd party prays for rejection of claim.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---|
| (i) Whether S/Shri Premlal, Itwari Yadav, Krishna Jhanghel, Dulay Ram, Papu Banjaray, Keshav Patel, Suresh Jhanghei and Lachi Ram Sinha are workmen under section 2(s) of Industrial Dispute Act, 1947? | Not proved. |
| (ii) Whether termination of services of above workers w.e.f 1992 is proper? | Termination of services is not proved. |
| (iii) If not what relief the workman is entitled to?" | Workmen are not entitled to any relief. |

REASONS

9. Though dispute is raised by 1st party workmen, statement of claim is filed on their behalf but workmen failed to participate in reference. Evidence of workman was closed on 29.2.2012. Management's Witness Shri Vikrant Vishwakarma filed affidavit supporting contentions of IInd party in Written Statement. Management's witness is not cross-examined. His evidence remained unchallenged. Management's witness Vikrant in his affidavit of evidence has stated that Khapa Depot was closed in 1989. Thereafter any labours or contractor were not doing any work in said depot. Affidavit of evidence of management's witness has also narrated about mate system in FCI. Workmen were not working at Khapa depot during the year 1989 to 1992. Their claim is false. The evidence of management's witness remained unchallenged. I find no reason to discard his evidence. Claim of workman is not supported by any evidence. The evidence of management's witness is corroborated by documents M-1 to M-3. For the reason discussed above, workman failed to establish that they are covered under Section 2(s) of ID Act. They have also failed to substantiate their claim, that they were entitled for absorption in any other depot or their termination is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No. 1 as not proved, Point No. 2-termination not proved.

10. In the result, award is passed as under:—

- (1) Ist party workmen failed to participate in reference proceeding therefore it could not be decided whether they are covered under Section 2(s) of ID Act, termination of their services by IInd party is not established.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1425.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 145/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं. एल-42012/44/2001-आईआर (सीएम-II)]

मो. जाहद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1425.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 145/01) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India, and their workmen, received by the Central Government on 07.07.2015.

[No. L-42012/44/2001-IR (CM-II)]

Md. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No.CGIT/LC/R/145/01

Shri Narendra Singh,
S/o/ Shri Kehar Singh,
C/o Marhoom Haji Roostam Khan
H.No. 288, Near School,
Station Nehru Nagar,
Lalitpur

...Workman

Versus

Asstt. Superintendent,
Archaeological Survey of India,
Archaeological Museum, Singhpur Palace
P.O. Chanderi,
Guna

...Management

AWARD

Passed on this 7th day of May 2015

1. As per letter dated 3-9-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of

I.D. Act, 1947 as per Notification No.L-42012/44/2001-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of Archaeological Survey of India, Chanderi in terminating the services of Shri Narendra Singh S/o Shri Kehar Singh *w.e.f.* December 1995 is legal and justified? If not, to what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/3. Case of Ist party workman is that he was initially appointed as watchman in IInd party on 1-1-1987. He was continuously discharging his duty till August, 98. His services were orally terminated. It is further submitted that on 5-9-94, workman was appointed on daily wages as watchman. He was continued till 31-12-95. During the period 5-9-94 to 31-12-95, he was paid under voucher from 1-1-1995, his name was entered in muster roll. In January 1995, workman requested for regularizing his services on vacant post of watchman, interview was held on 20-2-95. Ist party workman along with 4 other daily wage employees were interviewed. On recommendation of selection committee, workman and 3 other daily wage employees were appointed as casual labour as per order dated 21-2-95. It is alleged that IInd party adopted unfair labour practice Sept. 94 to Dec-95 by assigning work of artificial breaks of 1-2 days. Though he was continuously working from September, 94 to December, 95, IInd party paid wages only for 299 days. His services were abruptly terminated from 31-12-95 without any notice. Workman was not paid retrenchment compensation or pay in lieu of notice. That he completed 240 days continuous service preceding 12 months of his termination. That his services are terminated in violation of section 25-F of ID Act.

3. Ist party further submits that provisions of Section 25-G of ID Act are violated, Principles of last come first go was not followed. One Vishram Singh was engaged on daily wages in 1995 after engagement of workman was permitted to continue in services even after 31-12-95. IInd party also violated Section 25 H of ID Act. After termination of workman, IInd party appointed Shri Pappulal, Rajesh Mohite, Vijay Singh and Prakash on daily wages from 24-2-2000, 1-3-00 and 9-3-00. Workman was not re-employed. IInd party violated Rule 77 of Industrial Rule 1957 by not preparing list of all workmen of the category of workman and displaying on notice board 7 days prior to his retrenchment. By amendment, workman has pleaded that after termination of his service in December, 1998, he has no source of income. He was borrowing money from friends and relatives. He was not gainfully employed. On such contentions, workman prays for his reinstatement with backwages.

4. IInd party filed Written Statement on 17-8-02 opposing claim of workman. IInd party contends that during 1987-88, Archaeological Museum was directly under control of

Dy. Supdt. Archaeologist, Archaeological Survey of India at Red fort, Delhi. Muster roll and other records pertaining to Chennai region were maintained in said office. Dy. Suptd. ASI, Delhi is not made as party in the reference, Northern Region, Museum Branch is now defunct. Workman raised dispute after 14 years. The workman had approached CAT filing Original Application No. 321/96 contending that he worked in ASI, Sighpur Chanderi for few months. Workman had not given date of his engagement how long he was working with the management. IInd party further submits that workman was engaged as casual labour on daily wage basis. The certificate issued by management produced before CAT states that the workman was engaged on daily wages. It is denied that workman had worked as museum Attendant or as watchman. In petition before CAT, reply was filed by Mr. S.A. Siddqui alleging that workman had stolen official record. Zerox copy of stolen documents annexed. That workman had criminal tendency. Workman himself left job without information of his superiors.

5. IInd party further submits that workman was initially engaged as casual labour from 1-9-94 to 24-9-94 for 88 days. Again he was engaged in December, 1994 to December, 1995 as unskilled labour. Workman continuously worked for 90 days. Workman was working as casual labour and not as watchman. Workman not produced relevant documents working as watchman. Workman had worked in muster roll and paid accordingly as per record. It is denied that workman was interviewed by management for post of watchman against vacant post. Workman was interviewed for job of unskilled casual labour. He was subsequently engaged as casual labour on daily wages. Workman himself left job without notice. There was no question of regularization of his services. Workman does not fulfill conditions as per ID Act. IInd party is not covered as an Industry. In case CGIT/B/18/97, Vijayapati Samkhya and in case of Shri Bhagirath Sharma, it was held that IInd party is not an Industry. On such ground, IInd party submits that claim of workman is not legal.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------|
| (i) Whether the action of the management of Archaeological Survey of India, Chanderi in terminating the services of Shri Narendra Singh S/o Shri Kehar Singh w.e.f. December, 1995 is legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. Ist party workman is challenging termination of his service. For violation of Section 25-F of ID Act. In support of his claim, workman filed affidavit of his evidence. Workman has stated that he was appointed as watchman in January, 1987. Along with him one Sonu Khan, Prem were appointed as Attendant. They are regularised. Sonu Khan is still working at Chanderi. From 5-9-94, he was engaged on daily wages as watchman in 1995, his services were orally terminated without any notice, retrenchment compensation was not paid to him. His signature was obtained on muster roll. In January, 1995, he requested for regularization on post of watchman. He was called for interview on 20-2-95. He and 3 other labours were interviewed. They were given appointment as casual labour. He was not issued notice of termination, retrenchment compensation was not paid. From evidence of workman, documents Exhibit W-1 to W-6 are admitted in evidence. In his cross-examination, workman says in 1994, he was appointed as watchman. He denies that he was engaged as casual labour. He denies that during Sept. to November, 94, he worked only for 58 days. The document Exhibit W-1 shows workman was engaged on daily wages during the year 1987-88, Exhibit W-2 is interview call calling workman for interview on 20-2-95. Exhibit W-3 is appointment letter given to workman and 3 others subject to certain conditions. Exhibit W-4 is workman was engaged as casual labor in 1995. Exhibit W-5 is Identity Card issued to workman.

8. IInd party did not adduce any evidence. Evidence of IInd party is closed on 3-2-2015 as such the contentions of IInd party are not supported by any evidence. Counsel for IInd party was absent and no arguments are advanced. Considering the evidence of workman supported by the documents, it is clear that termination of services of workman without notice, without paying retrenchment compensation is illegal. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No.2- The workman was engaged as casual labour on daily wages. The workman was working with IInd party from 1987 to 1995 for about 7 years. Considering nature of employment as casual labour, reinstatement with back wages would not be justified.

10. Learned counsel for workman relief on ratio held in Case of Ashok Kumar Sharma *versus* Oberoi Flight services reported in 2010(1) SCC 142. Their Lordship held that compensation allowed to workman Rs. 60,000/- was not justified, compensation was enhanced to Rs. 2 Lakhs.

In above cited case, workman was working as labour on Oberoi Flight Service. Workman in present case cannot be compared with workman in above cited case. Considering the length of service, in my considered view, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:—

- (1) The action of the management of Archaeological Survey of India, Chandari in terminating the services of Shri Narendra Singh S/o Shri Kehar Singh *w.e.f.* December 1995 is not proper.
- (2) IInd party is directed to pay compensation Rs. One Lakh to the workman within 30 days from the date of publication of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1426.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 155/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं एल-22012/129/2002-आईआर (सीएम-II)]

मो. जाहद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1426.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 155/02) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coalfields Limited, and their workmen, received by the Central Government on 07.07.2015.

[No.L-22012/129/2002-IR(CM-II)]

Md. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/155/02

Shri Teej Ram S/o Shri Shiv Sahai,
Village Chanadongi,
Post Parasi,
Thana Marvahi,
Distt. Bilaspur (CG)

...Workman

Versus

Sub Area Manager,
South Eastern Coalfields Limited,
Ram Nagar Sub Area,
Distt. Shahdol (MP)

...Management

AWARD

Passed on this 1st day of May, 2015

1. As per letter dated 12.12.2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/129/2002-IR(CM-II). The dispute under reference related to:

"Whether the action of the Sub Area Manager, South Eastern Coal Fields Limited, Ram Nagar Area in terminating the services of Shri Teej Ram S/o Shri Shiv Sahai *w.e.f.* 25.10.99 is legal and justified? if not, to what relief is the workman concerned entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that from 02.02.1977, he was working as loader in South Jhimar Colliery, Distt. Shahdol, Chargesheet was issued to him for unauthorized absence. He was honestly working. He submitted application about his illness. He belongs to SC community. When he had approached IInd party with reply to chargesheet, he was told that the officer was not present. Without recording statement of any witness, order of dismissal was issued on 25.10.99. Appeal filed by him was dismissed on 30.01.2002. The Medical Certificate about his illness produced were not considered. That workman was resident of Chanadogri Marwai, he was attending duty from 50 Kms distance. Quarter was not provided to him because of illness, he could not attend the duty. Without considering his submissions and length of 20 years service, punishment of dismissal was imposed. Ist party submits that the order of dismissal is illegal. He prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 7/1 to 7/12. IInd party submits that service condition of employees in Coal Industry are governed by settlement called NCWA. IInd party provides medical facility to its employees and their family members. In case of serious illness, the employees are also provided the treatment in specialized hospitals. As per provisions of standing orders, application for leave, extension of leave on medical ground needs to be supported by Medical Officer, registered Medical Practitioner. Workman was habitual absentee. He was remaining unauthorisely absent. Workman was issued warning, chargesheets. It is submitted that chargesheet No. 525 was issued to workman on 27.09.94. Workman had

submitted apology in reply to chargesheet. He was allowed on duty on 31.8.94. Warning letter was issued to workman on 24.11.94. Again chargesheet for unauthorised absence was issued on 20.04.95. The reply submitted by workman was found unsatisfactory. Shri A.K. Dwivedi was appointed as Enquiry Officer. Workman was allowed to resume duty from 30.05.95 for absence of workman from 20.05.95 to 04.07.95. Chargesheet was issued on 07.07.95. In reply to chargesheet, workman admitted charges and apologized for his absence. He was allowed to resume duty on 04.09.95. Chargesheet were also issued on 19.04.96. Enquiry Officer Shri S.N. Mittal was appointed as reply of workman was not found satisfactory. The details of working days of workman are shown 76 days in 1997, 130 days in 1998, 40 days till July, 1998. It is reiterated that as reply to chargesheet was not found satisfactory, Shri A.K. Dwivedi was appointed as Enquiry Officer, Shri R.R. Tiwari as Management's Representative. Workman admitted charges before Enquiry Officer even after explaining consequences of admission of charges. Enquiry Officer submitted his report holding workman guilty of the charges. The Disciplinary Authority agreed with findings of Enquiry Officer. Competent Authority considering workman remained absent on several occasions, warnings were issued to him. DE was conducted. The appeal preferred by workman was rejected. IInd party further submits enquiry conducted against workman is found illegal. Management be permitted to prove misconduct in Court. While imposing punishment against workman, his past record was considered. IInd party referred to ratio held in various cases. All the material allegations of workman are denied. It is denied that workman had submitted medical reports. Workman made allegation against Enquiry Officer finding that report of enquiry was against him. It is denied that workman was residing at 50 Kms. distance. Workman never applied for residential quarter. Workman was staying at his own house. He never submitted application for allotment of quarters. On such ground, IInd party submits claim of workman is not justified.

4. As per order dated 20.11.2012, my predecessor found enquiry conducted against workman as legal.

5. Considering findings on preliminary issue and pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------|
| (i) Whether the charges alleged against workman is proved from evidence is Enquiry proceedings? | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Negative |
| (iii) If not, what relief the workman is entitled to?" | As per final order. |

Reasons

6. Enquiry conducted against workman is found legal as per order dated 20.11.2012. The question remains whether charges alleged against workman are proved from evidence in Enquiry Proceedings, whether punishment of dismissal imposed against workman is proper and legal. For deciding Ist point, the evidence in Enquiry Proceedings needs to be considered. The record of enquiry is produced. Exhibit M-1 is chargesheet issued to workman for habitual late attendance and habitual absence without leave or without sufficient cause. The period of absence is shown from 02.05.94 to 22.09.94. In reply Exhibit M-2, Ist party workman contented that he could not attend duties as he was attending his work from 50 Kms. distance. He could not submit application. The chargesheet Exhibit M-5 relating to the period of unauthorized absence 09.02.95 to 19.04.95. As per Exhibit M-6, it is contented that he submitted application for leave. He is not literate person. He could not submit the report about his illness. In Exhibit M-10, workman submitted that he was ill, he was receiving treatment. The intimation was sent by RPAD along with Medical Certificate. In Enquiry Proceedings, Exhibit M-12, when charges were explained to workman, he admitted charges against him, workman assured not to repeat such incidents. W.r.t. chargesheet Exhibit M-13, period of unauthorized absence 22.02.96 to 17.04.96. In reply Exhibit M-14 submitted by workman, it is contented that he was absent because of illness. He was receiving treatment in hospital. In Exhibit M-17, workman assured not to repeat such incident. In Enquiry Proceedings Exhibit M-20, workman admitted charges against him. In view of charges are admitted, the charges of unauthorized absence against workman are proved. He was repeatedly assuring not to repeat such acts in future. Workman admitted charges, I record my finding in Point No. 1 in Affirmative.

7. Point No. 2—as per finding on Point No. 1, charges of unauthorized absence are proved, question remains whether the punishment of dismissal is proper and legal. As per pleading of workman, he was continuously working with IInd party from 02.02.77. Workman was issued warnings for unauthorised absence in past. Workman did not produce Medical certificate of his illness before Enquiry Officer. Workman appears illiterate, he has put his thumb marks in enquiry Proceedings and other documents submitted before Enquiry Officer Page 4/16, 4/17. IInd party did not dispute that workman was initially appointed in February 1977. the chargesheets were issued to workman for unauthorised absence since the year 1994. It appears that workman had completed more than 17 years service. Workman is dismissed for unauthorized absence. Workman in his affidavit of evidence on other issues submits that he punishment imposed against him is not proportionate to

the charges. In his cross-examination, workman says that he had submitted medical certificates in Enquiry Proceedings. Intermittently he was attending duties. In the past 3 years, he was remaining absent. Chargesheet was issued to him by IInd party. He claims ignorance whether the employees used to be referred to specialized hospital. He received documents about his treatment. He claims ignorance whether entries were taken in the Medical Card. Considering the length of service and period of unauthorized absence in chargesheet Exhibit M-13, 22.02.96 to 17.04.96, the punishment of dismissal appears harsh. Length of service of workman was not considered while imposing the punishment. Therefore the punishment of dismissal deserves to be modified to the punishment of compulsory retirement. Accordingly I record my finding in Point No. 2.

8. In the result, award is passed as under:—

- (1) The action of the Sub Area Manager, South Eastern Coal Fields Limited, Ram Nagar Area in terminating the services of Shri Teej Ram S/o Shri Shiv Sahai *w.e.f.* 25.10.99 is not proper.
- (2) Punishment of dismissal of workman is modified to compulsory retirement allowing retiral benefit as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1427.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 62/05) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं एल-22012/282/2004-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1427.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. 62/05 of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 07.07.2015.

[No. L-22012/282/2004-IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/62/05

Presiding Officer: Shri R.B. Patle
The Joint General Secretary,
Rshtriya Colliery Mazdoor Congress (INTUC),
B-24, Civil Lines,
PO Kotma Colliery,
Distt. Annuppur (MP)

...Workman/Union

Versus

Chief General Manager,
Jamuna and Kotma Area,
SECL, PO Jamuna,
Distt. Annuppur,
Annuppur (MP)

...Management

AWARD

Passed on this 30th day of April, 2015

1. As per letter dated 11.07.05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L/22012/282/2004-IR (CM-II). The dispute under reference relates to:

"Whether the action of the Chief General Manager, Jamuna and Kotma Area of SECL in dismissing Shri Jagangir Khan S/o Shri Taj Mohammad, Sr. Store Keeper from company's services *vide* order dated 24/25-01-1997 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through the General Secretary, Rshtriya Colliery Mazdoor Congress at page 5/1 to 5/5. Case of workman is that he was employed as wardboy at Kotma Colliery Regional Hospital of SECL in the year 1974. While he was working in said hospital, he was promoted to the post of Store Keeper in 1978. Again in 1988 he was promoted as Sr. Store Keeper and posted at Regional Stores of Jamuna and Kotma area of SECL. In July 94, he sustained attack of depression (Schizophrenia). On 5-7-95, he requested medical advance of Rs. 5000/- through his family members. As he was suffering from depression (Schizophrenia) ailment, he was not in a condition to join duty. Workman was granted EL for the period 22-8-94 to 7-9-94. The person suffering from Schizophrenia and illness characterized by delusion and popularly termed as split personality disorder. Such patient remains as normal 99%, it affects in between. Workman

was suffering from chronic Schizophrenia *i.e.* mental illness. He was continuously receiving treatment from different Doctors for ailing mental condition. Workman was not aware of his own personality and status or he was employed somewhere.

3. Ist party workman submits that he was receiving treatment in various hospital from 3-9-94 to 6-8-00. As per letter dated 16-8-00, he requested General Manager to allow him to join duty. He was allowed to join duty. Again he requested General Manager to allow him to join duty as per letter dated 22-9-00. He was informed that he was dismissed from service from 25-1-97. He could not be permitted to join duty. Workman submits that he had not received any chargesheet, he was terminated without enquiry knowing that workman was suffering from illness, he was not given opportunity of hearing before his dismissal from 22-1-97. Workman also submits that under Section 47 of disability Act, the person acquires disability from service cannot be removed from service. It is reiterated that his service are terminated without notice, without enquiry. His termination is illegal. On such ground. Workman prays for his reinstatement with backwages.

4. IInd party submitted Written Statement at Page 6/1 to 6/8 opposing claim of the workman. It is submitted that the reference is highly belated. Workman was dismissed from 22-1-97. That dispute is raised in the year 2005. Such reference is not tenable. The service conditions of employees working in coal industry are covered by Bipartite Settlements known as NCWA. The employees and their family members are provided facilities such as free fuel, free accommodation, free water supply, free medical aids etc. the Central Govt. Hospitals are also at functioning shahdol. Serious cases are referred to the specialized hospitals in Metropolitan cities. If employee falls ill, he has to report to medical authority of the company who issue sick certificate then sick leave is granted. Workman has not received treatment in colliery hospital. On his request for medical advance of Rs. 5000/- as per letter dated 29-7-95, workman was informed that he was unauthorisely absent without intimation and his advance cannot be granted. Workman has to apply for Medical Advance as per Medical Attendance rules. On 27-4-95, workman was served with chargesheet for unauthorised absence. Shri S.N.P. Singh was appointed as Enquiry Officer, G.C.Naidu was management representative. Despite of various notices issued on available addresses, workman failed to appear in Enquiry Proceedings. Enquiry was proceeded *ex parte*. Enquiry Officer submitted his finding. Charges against workman are proved. On proved misconduct of unauthorized absence, workman was dismissed from service after issuing showcause notice. IInd party submits that order of dismissal is proper and legal. Workman is not entitled to any relief.

5. Workman submitted rejoinder at Page 8/1 to 8/6 reiterating his contentions in statement of claim. It is

contented further that generally patients are not referred to specialized hospitals. Due to mental disturbance, workman was not aware of his own personality and status as he was suffering from Schizophrenia. He was not capable for applying his mind. All adverse contentions of management are denied.

6. As per order dated 6.5.2013, enquiry conducted against workman is found illegal. Management was permitted to prove misconduct in Court.

7. Considering pleadings on record, the point which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------|
| (i) Whether the misconduct of unauthorized absence alleged against workman are proved? | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is excessive? | In Negative |
| (iii) If so, to what relief the workman is entitled to?" | As per final order. |

REASONS

8. As per order dated 6-5-2013, enquiry conducted against workman is found illegal. Management was allowed to prove misconduct in Court. Management filed affidavit of witness Priyabrata Mohanty. He has narrated in his affidavit workman was granted EL for 22-8-94 to 7-9-94. He was to report on duty from 8-9-94. Workman was unauthorisely absented from his duty. He failed to report for duty. The letter dated 13-6-95 was issued to him advising to report for duty within 3 days. On 5-7-95, management had issued letter for medical advance of Rs. 5000/- for his treatment. He was informed about his unauthorized absence from 8-9-94. he was absent without intimation. He failed to submit application. His further affidavit is devoted on the point of issues conducting enquiry, workman failed to participate in the enquiry. In his cross-examination management's witness says in 1994, he joined management as Welfare Officer at SECL, Korba. He was working from 1994 to 2001 at Korba. He joined J&K Area in 2009. He personally did not deal with any matter relating to the workman. He had seen record of workman relating to his absence. The medical certificate dated 13.4.96 was not seen by him. He had not seen medical certificate dated 20-11-2000. The evidence of management's witness about unauthorized absence of workman since 8-9-94 is not challenged in his cross-examination.

9. Management's witness Shri G.N. Naidu in his affidavit of evidence has narrated that workman remained absent from 8-9-94 as per Attendance Register. Workman was marked sick from 9-8-94 till December 1994. Workman was

paid sick wage for 25 days. Enquiry was conducted and report was submitted by Enquiry Officer. As enquiry conducted against workman is found illegal, the evidence on the point needs no detailed discussion. From evidence of MW-2, documents Exhibit M-13 to 15 are admitted in evidence. Management's witness admitted Exhibit W-1. In his cross-examination, MW-2 he did not give any reply to the question when sick leave is granted. He admits that he had granted EL for the period 22.8.94 to 7.9.94. He had also granted sick leave for 8.9.94 to 19.12.94. The witness explained that when employee is absent without permission, he is called unauthorized absent. In his further cross, MW-2 says that he was not knowing that workman was suffering from illness. The absence of workman from duty is not challenged in cross-examination of both the witnesses.

10. Turning to the documentary evidence, Exhibit M-1 was issued to the workman about his absence, M-2 finds reference that if workman was suffering from illness, he was advised to appear before Medical Suptd. Kotma for his check up and further treatment. Exhibit M-3 to M-23 relates to the Enquiry Proceedings. As enquiry conducted against workman is found illegal, it is not necessary to examine those documents in detail. In Exhibit W-1, wife of workman had requested advance of Rs. 5000 narrating that her husband was suffering mental sickness from long time, the advance was required. Document Exhibit M-13 produced by management is xerox copy of Attendance Register is not legible. From evidence of management's witness No.1, 2, absence of workman without intimation is established. The evidence on the point is not shattered, charge of unauthorized absence of workman is proved. For above reasons, I record my finding in Point No. 1 in Affirmative.

11. Point No. 2— In view of my finding in Point No.1, charge of unauthorized absence against workman is proved, question arises whether the punishment of dismissal is imposed against workman is proper and legal.

12. Learned counsel for Ist party Shri S. Pandey submitted detailed notes of arguments relying bunch of citations.

In case of Kunal Singh versus Union of India and another reported in 2003(4) SCC 524. Their Lordship dealing with Provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 held the prohibition in Section 47 against dispensing with the services of an employee acquiring a disability during his service is mandatory. The employee of an establishment which was not exempted from Section 47 acquiring disability during service and getting incapacitated. Such an employee is held covered by Section 47(i)(v). the verbatim of Section 47 is reproduced in para-4 of the judgment. Para-47. No establishment shall dispense with or reduce in rank an employee who acquires a disability during his service. Provided that, if an employee

after acquiring disability is not suitable for the post, he was holding, could be shifted to some other post with the same pay scale and service benefits.

In case of Deepali Gundu Surwase *versus* Kranti Junior Adhyapak Mahaidyala and other reported in 2013(10)SCC 324. Their Lordship dealing with the consequential relief in the matter of wrongful illegal termination of service held where employer wants to deny back wages or contest the employees entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

In case of Jagdish Prasad *versus* State of Rajasthan and others reported in 2009(LAB). I.C.2977, his Lordship of Rajasthan High Court held in exparte disciplinary proceedings order of removal passed was not sustainable being violative of Article 14 & 16 and principles of natural justice.

The ratio held in above case cannot be applied at this stage as enquiry against workman is already found illegal.

13. The service excerpts of workman are produced at Exhibit M-15, 16. The date of birth of workman is shown 4.8.54. Workman has attained age of superannuation therefore there is no question of his reinstatement.

14. Considering Exhibit W-1, it is clear that workman was mentally sick and request for advance by his wife was not accepted. Management had advised workman for medical examination. The person suffering from mental illness could not be expected to behave normally as the medical illness affects his intellectual capacity. Workman could not get himself medically examined even for purpose of Medical Advance shows his incapacity. While imposing punishment of dismissal, any of those facts were not considered. The Disciplinary Authority even did not consider length of service of workman from 1974. Therefore the punishment of dismissal imposed against workman is disproportionate and excessive. When workman had rendered service of about 20 years prior to his absence from duty, why he was not allowed benefit of retirement is not explained from pleading and evidence of IInd party management. Considering those circumstances in my considered view, punishment of dismissal from service deserves to be modified to compulsory retirement allowing retiral benefits to workman. Accordingly I record my finding in Point No.2.

15. In the result, award is passed as under:—

- (1) The action of the Chief General Manager, Jamuna & Kotma Area of SECL in dismissing Shri Jagangir Khan S/o Shri Taj Mohammad, Sr. Store Keeper from company's services *vide* order dated 24/ 25.1.1997 is not proper and legal.
- (2) Punishment of dismissal of workman is modified to compulsory retirement allowing retiral benefit as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1428.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एनएलसील के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (संदर्भ संख्या 69/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं एल-22012/54/2014-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1428.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of M/s NLC Ltd., and their workmen, received by the Central Government on 07/07.2015.

[No. L-22012/54/2014-IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Thursday, the 25th June, 2015

Present : K.P. PRASANNA KUMARI
Presiding Officer

Industrial Dispute No. 69/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of M/s. EDAC Ltd. and their workman)

Between

Sri A. Pari : 1st Party/Petitioner

and

1. The Chief Manager/HOHR : 2nd Party/1st
M/s. NLC Ltd. Respondent
Thermal Power Station-II
Expansion
Neyveli-607802
2. M/s. EDAC Engineering Ltd. : 2nd Party/2nd
No. 88, Mount Road Respondent
Guindy, Chennai-600032

3. M/s. BHEL-Principal Contractor : 2nd Party/3rd
Project Office, C/o M/s. NLC Ltd. Respondent
TPS-II Expansion
Neyveli-607802

Appearance:

- For the the 1st Party/Petitioner : M/s. C.D. Sugumar,
T. Ramkumar,
Advocates
- For the 2nd Party 1st Respondent : M/s. NAK Sarma,
Advocates
- For the 2nd Party/2nd Respondent : M/s. K.
Sathayakumar,
Advocates
- For the 2nd Party/3rd Respondent : M/s. S.
Ramasubramaniam
& Associates,
Advocates

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-22012/54/2014-IR (CM. II) dated 14.08.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in the order is:

"Whether the demand of the workman Sri A. Pari seeking employment from the management of M/s. EDAC Limited with effect from 06.09.2011 *i.e.* from the date he was given "Fit for Duty" by Medical Authority is justified? if so, to what relief he is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 69/2014 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner was working with the Second Respondent, a Sub-Contractor of the Third Respondent under the Principal Employer, the First Respondent. He was drawing salary of Rs. 11,000/- from Second Respondent M/s EDAC Engineering Ltd. On 17.06.2011, while the petitioner was working as Fitter he met with an accident and suffered injuries which damaged his middle finger and a portion of his index finger. He was given medical treatment at the hospital of the First Respondent as well as in the Government Hospital. After recovery the petitioner reported for duty to the Second Respondent alongwith a fitness certificate. However, the Second Respondent refused to provide employment to the petitioner. Denial of employment by the Second Respondent is arbitrary. The petitioner raised dispute before the Assistant Labour Commissioner, Puducherry. Before the Labour Commissioner the Second

Respondent has taken the stand that the petitioner was engaged by one M/s Tech Force Erectors, a Sub-Contractor. The petitioner was in fact employed by the second Respondent only and not by Tech Force Erectors. The denial of employment to the petitioner amounts to constructive termination of service from 06.09.2011 on which date the petitioner was given fitness certificate to resume work. An order may be passed directing the Respondent to reinstate the petitioner in service with back wages, continuity of service and attendant benefits.

4. The First Respondent has filed Counter Statement contending as follows:

The dispute raised by the petitioner against the First Respondent is frivolous and based on misconception. The First Respondent has been unnecessarily arrayed as a party to the dispute. The petitioner has not claimed any relief against the First Respondent. The dispute is directed against the Second Respondent alone. The dispute against the First Respondent is to be dismissed in-limni as not maintainable. No employer employee relationship existed at any time between the petitioner and the First Respondent. The petitioner himself has admitted in his Claim statement that he was the employee of the Second Respondent. The First Respondent has awarded the work of main plant (BTG)-A-01 Package of Manufacture, Supply, Erection and Commissioning of 2x250MW Thermal Power Station-II Expansion to the Third Respondent with a provision to engage Sub-Contractors. Accordingly, the Third Respondent has engaged the Second Respondent as a Sub-Contractor. The Second Respondent had employed the petitioner as a contract worker. The First Respondent is in no way connected with the employment of the petitioner by the Second Respondent. The dispute raised by the petitioner against the First Respondent is to be dismissed as without merits.

5. The Second Respondent has filed Counter Statement contending as below:

The Second Respondent is a multinational construction company and is engaged in the business of construction and has earned high reputation worldwide. The Second Respondent has been awarded work at Neyveli by the Third Respondent for construction and erection of 2x250 MW Thermal Station-II Expansion project at Neyveli. To carry out the work the Second Respondent had issued work to Sub-Contractors for supply of manpower with requisite skills and qualifications. The manpower engaged by the Sub-Contractors is directly under the Sub-Contractor and not under the Second Respondent. The Second Respondent has issued work order to M/s Tech Force Engineers. The petitioner was not an employee of the Second Respondent. He was directly employed by Tech Force Engineers as a Fitter on 26.11.2010 on daily wage basis @ Rs. 198.36 per day and the work of the petitioner was supervised and monitored by Tech Force and payment

was also made by them. The petitioner met with an accident on 17.06.2011 and was immediately given First Aid and the report of accident was submitted to the Third Respondent. The responsibility for the treatment of the petitioner was taken by M/s Tech Force Engineers. The petitioner's attendance and wage registers was maintained by Tech Force Engineers. The petitioner did not approach the real employer Tech Force Engineers after he obtained Fitness Certificate. The Second Respondent has nothing to do with the employment or non-employment of the petitioner except that it was monitoring payment of compensation to the petitioner. The petitioner is not entitled to any relief from the Second Respondent.

6. The Third Respondent has filed Counter Statement contending as below:

The petitioner has not sought any relief from the Third Respondent since he is well aware that there is no employer-employee relationship between him and the Third Respondent. The Third Respondent is not a necessary party to the dispute. The dispute is actually between the Second Respondent and the petitioner. The Third Respondent is a Government of India Undertaking engaged in the business of erection, commissioning and servicing of power plants in the Southern part of the country. The First Respondent had awarded work contract of manufacture, supply, erection and commissioning of 2x250 MW Thermal Station at Neyveli Lignite Corporation to the Third Respondent. The Third Respondent was authorized to engage Sub-Contractors to accomplish the task as envisaged in the agreement with the First Respondent. Pursuant to this the Third Respondent entered into a contract with the Second Respondent for carrying out part of the work. The Second Respondent is an independent employer who has engaged contract labour and obtained labour license. The petitioner is not entitled to any relief against the Third Respondent.

7. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext. W1 to Ext. W9 and Ext. M1 to Ext. M9.

8. The points for consideration are:

- (i) Whether the demand of the petitioner seeking employment from the Second Respondent is justified?
- (ii) What if any is the relief to which the petitioner is entitled?

The points

9. The petitioner has claimed that he was working as Fitter on a project of Neyveli Lignite Corporation, the First Respondent, as employed by the Second Respondent. The First Respondent, the principal employer is said to have given contract for expansion of its Thermal Power Station to the Third Respondent. The Third Respondent in its turn

had engaged the Second Respondent as Sub-Contractor to carry out part of the work. According to the petitioner he was engaged by the Second Respondent as Fitter and accordingly he was working with the Second Respondent. He met with an accident during the course of his employment on 17.06.2011 and had undergone treatment. He obtained Fitness Certificate on 06.09.2011 and he approached the Second Respondent to resume work. According to the petitioner the Second Respondent refused to provide work to him. This according to him amounts to constructive termination from service. It is accordingly he has raised the dispute claiming employment.

10. In the prayer portion of the Claim Statement the petitioner has not stated against with Respondent he is claiming relief. He has merely used the general term "Respondent" and has stated that the Respondent Management is to reinstate him in service with full back wages, continuity of service and other attendant benefits. However, ongoing through the Claim Statement itself it could be seen that the claim of the petitioner could be against the Second Respondent only. There is no case for him that he was employed either by the First Respondent or by the Third Respondent. So the relief claimed is to be taken as one against the Second Respondent only, even as per the Claim Statement. In the Proof Affidavit filed by him the petitioner has made it further clear that he was employed by the Second Respondent only and he is entitled to reinstatement by the Second Respondent. During his cross-examination he has again stated that he is claiming relief only against the Second Respondent as he was employed by the Second Respondent the petitioner seems to have made the First and Third Respondent parties to the dispute only because they were the principal employer and the Contractor respectively, as formal parties. As contended by these Respondents, the petitioner is not entitled to any relief against them for the very fact that there is no claim as such and also because there was never any employer-employee relationship between them and the petitioner.

11. The dispute is mainly between the petitioner and the Second Respondent. The contention raised by the Second Respondent is that the petitioner was not directly employed by it but by another establishment by name M/s Tech Force Engineers which was the Sub-Contractor engaged by it for supply of manpower. This case is disputed by the petitioner. His specific case is that he was directly employed by the Second Respondent only.

12. The Legal Advisor of the Second Respondent has given evidence as MW1 on behalf of the Second Respondent. The contention that the petitioner was employed by M/s Tech Force Engineers is repeated by this witness. However, no acceptable material was available to show that petitioner was the employee of another

establishment by name M/s Tech Force Engineers and not by the Second Respondent itself. Ext. M7 (series)-Attendance Register is said to be maintained by Tech Force. These documents are not proved through the competent person. MW1 is not competent to prove them, he being only an employee of the Second Respondent. So, on the basis of these Attendance Registers it cannot be found that the petitioner was not employed by the Second Respondent.

13. There is sufficient documentary evidence to show that the petitioner was the direct employee of the Second Respondent. Ext. W1 is the copy of the Entry pass issued to the petitioner. This shows the Second Respondent as the Company who has engaged the petitioner. In Ext. W3-Fitness Certificate, the petitioner is shown as the employee of the Second Respondent. Of course, this was issued by the Medical practitioner, most probably on the information given by the petitioner. However, this was issued at a time when there was no dispute regarding the status of the petitioner as a workman. The most important document which shows that the petitioner was employed by the Second Respondent is Ext. W 4, the order passed by the Workman Compensation Authority directing the Second Respondent to pay compensation to the petitioner. In this the Authority has found that the Second Respondent was the employer of the petitioner and has directed it to pay compensation. Ext. M4 is the letter by the Chief Manager of the Second Respondent issuing Demand Draft of Rs. 2,98,557/- to the petitioner towards compensation as directed by the Workman's Compensation Authority. It is clear from this that the Second Respondent has not challenged the order of the authority but has paid the amount ordered as compensation. Thus it could be seen that the Second Respondent has accepted the finding of the authority under the Workman's Compensation Act that it is the employer of the petitioner. The oral evidence of the petitioner along with the documentary evidence is sufficient enough to show that the petitioner was employed by the Second Respondent.

14. It is clear from the evidence of the petitioner that he has approached the Second Respondent for employment after he obtained Ext. W3-the Fitness Certificate from the concerned Medical Practitioner. In spite of this he was not allowed to resume his work by the Second Respondent. As stated by the petitioner this is to be treated as constructive termination from service *w.e.f.* 06.09.2011, the date on which Fitness Certificate was issued. The petitioner is entitled to be reinstated in service with the Respondent with continuity of service and other benefits. Back wages due to him is restricted to 50%.

15. On the bases of the above finding an award is passed as follows:

The Second Respondent is directed to reinstate the petitioner in service within a month of publication of the award. The petitioner will be entitled to 50% back wages from 06.09.2011 to the date of publication of the award. He is also entitled to the benefit of continuity of service. If back wages is not paid within a month of the award it will carry interest at the rate of 9% per annum from the date of the award.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW 1, Sri A. Pari

For the 2nd Party/Management : MW 1, Sri V. Balaji Pathak

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex. W1	31-12-2009	Entry pass of the petitioner
Ex. W2	23.06.2011	Discharge summary given to the petitioner
Ex. W3	06.09.2011	Fitness certificate given to the petitioner
Ex. W4	09.02.2012	Order passed by the WC authority
Ex. W5	Nil	Communication of the petitioner to Asstt. Commissioner of labour
Ex. W6	07.04.2014	Communication of the second respondent to the Asstt. Commissioner
Ex. W7	Nil	Communication of the third respondent to the Asstt. Commissioner of Labour
Ex. W8	02.06.2014	Failure Report given by the Asstt. Commissioner of Labour

On the Management's side

Ex.No.	Date	Description
Ex. M1	24.03.2011	Work order issued to M/s Tech Force Engineers by EDAC Engineering alongwith amendment 1&2
Ex. M2	15.09.2011	Letter issued by EDAC Engineering regarding concluding of manpower Supply
Ex. M3	—	Accident report submitted before the NLC and BHEL by EDAC duty Acknowledged
Ex. M4	—	DCL Award and receipt for the deposit of compensation duly Acknowledged
Ex. M5	17.06.2011	On duty certificate issued by Tech Force Engineers and Wage Certificate

Ex. M6	—	Gate Pass issued by Tech Force for temporary entry
Ex. M7	—	Attendance Register maintained by Tech Force for the month of March, April, May and June 2011
Ex. M8	01.06.2007	Copy of the letter of intent between BHEL and M/s EDAC previously known as Spic Jet Engineering Construction Ltd.
Ex. M9	27.05.2013	Copy of the license granted to M/s EDAC

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1429.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न. 1, धनबाद के पंचाट वाद संख्या 2/2015 (संदर्भ संख्या 138/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं. एल-22012/170/1996-आईआर (सी-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1429.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Complaint No. 2/2015 (Arising out of Ref. No. 138/97) of the Cent. Govt. Indus. Tribunal - cum-Labour Court, No. 1, Dhanbad as shown in the Annexue, in the Industrial dispute between the management of FCI and their workmen, received by the Central Government on 07/07/2015.

[No. L-22012/170/1996-IR (C-II)]

Md. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 1) DHANBAD,

In The Matter of a Complaint U/S 33(a) of I.D. Act,
1947

Complaint No. 2/2015

Arising out of Ref. 138/97

Order No. 22012/170/96-IR (C-II)

Hans Raj Singh AG II (Depot)
Food corporation of India,
FSD Katihar

...Complainant

Vs

The General Manager,
Food Corporation of India
Arunachal Building,
Exhibition Road, Patna-1

...Opp. Party

Present : SRI RANJAN KUMAR SARAN,
Presiding Officer

Appearances:

For Complainant : Sri Vijayendra
Kumar, Zonal
President FCIESU

For Opp. Party (Dist. Office, Patna) : Sri Anshu Sharma,
AGM (P) (R.O)

State : Bihar Industry : Food

Dated: 12/6/2015

AWARD

2. This application filed by the applicant U/s 33 of the I.D. Act, as the management changed the service conditons of the workman while reference No. 138/97 is pending concerning the present workman & others.

3. The workman submitted that on the basis of departmental enquiry the management has stopped two increments of the workman with cumulative effect.

4. While deciding matter after hearing the parties, also perused the enquiry report. The case is some excess payment made to the third party due to oversight and when the same was came to the knowledge of the delinquent he deposited the amount with 12.5% interest thereon much prior to issuance of change sheet. The said fact has been considered by the enquiry officer who gave the concluding part of the report as below:—

"It is proved during the course of enquiry that all but Rs. 4000/- of the excess payment has been deposited with/recovered by FCI along with interest. The CO has also expressed his willingness to deposit the excess payment of Rs. 4000/- admitting his mistake. As mistake can be done by any one while performing duties under pressure and as it appears that there was no personal financial gain to the CO, the CO can't be held guilty for any malafied intention."

5. This being the observation of the EO, the same should be carefully read by authority and to pass orders. But from the orders it appears as if the authority has made of his mind to punish the delinquent and the enquiry was an eye wash.

6. Considering the facts and circumstances of this case I hold that the Higher authority like management is more hot than the low grade staff. The higher grade management should know the rule of science, that higher is cooler.

therefore it is ordered that, the order of stopping two increments of the workman is wholly illegal. Hence the workman be given said increments usually.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1430.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न. 1, धनबाद के पंचाट संदर्भ संख्या 1/2014 एवं 7/2014 (संदर्भ संख्या 138/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं. एल-22012/170/1996-आईआर (सी-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1430.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Complaint No. 1/2014 & 7/2014 (Arising out of Ref. 138/97) of the Cent. Govt. Indus.-Tribunal -cum-Labour Court No. 1 Dhanbad as shown in the Annexue, in the Industrial dispute between the management of FCI and their workmen, received by the Central Government on 07/07/2015.

[No. L-22012/170/1996-IR(C-II)]

Md. ZAHID SHARIF, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No. 1), DHANBAD**

In the matter of a Complaint u/s 33(a) of I.D. Act, 1947

Complaint No. 1 of 2014

Arising out of Ref. No. 138/97

Ministry's order No. 22012/170/96 IR(C-II)

Rabindra Nath Pathak,
Ex-AG II (D),
S/O Late Jagnanath Pathak,
Vill-Chhutki Saranpur,
PO-Buxar Dist. Buxar.

...Complaint

Vs

Executive Director (East Zone),
Food Corporation of India, 10-A,
Middleton Row, Kolkata-71

...Opp. Party.

Complainant No. 7 of 2014

Arising out of Ref. No. 138/97

Ministry's order No. 22012/170/96 IR(C-II)

Chandeshwar Raj, AG II(D),

S/o Late Bindeshwar Rai,

Vill-Basana Raja Ram,

PO-Dhebwan, Distt.

Gopalganj

...Complainant

Vs.

Executive Director (East Zone),

Food Corporation of India, 10-A,

Middleton Row, Kolkata

...Opp. Party

Present :

R.K.SARAN, Presiding Officer

Appearance :

For complainant : Sri Vijayendra Kumar,
Authorised representative

For Opp. Party : Sri Anshu Sharma, Asstt.
G.M. (P) RO, FCI Patna

Industry: Food

Dated: 9/6/2015

AWARD

- (1) Both the complainants are filed under section 33 of the ID Act, 1947 for violation of section 33 of the ID Act, 1947 by Shri Vijayendra Kumar under the authority of the complainants on their behalf.
- (2) Both the complaint cases are similar in nature and are arising out of reference case No. 138 of 1997 hence both the cases are heard jointly and common award is passed as hereunder.
- (3) The complainants of both the cases were dismissed from their service *w.e.f.* 17.09.2013 and 14.06.2012 along with forfeiture of gratuity and post-retirement benefits.
- (4) The case of the workmen is that a dispute reference No. 138 of 1997 is pending before this Tribunal regarding all the workmen of Bihar region and the complainant are also concerned workmen of the said dispute but during the pendency of said dispute the management on flimsy allegation dismissed them without proper enquiry and in gross violation of Sec. 33 of the ID Act 1947 without taking approval nor paid one month salary to them which was mandatory on the part of the management.
- (5) On the other hand the case of the management is that the present workmen were not the workmen concerned of that dispute as such management has liberty to initiate disciplinary action against the workmen for lapses and can take any action as per their law. It is further submitted by the management

that they have taken action as per provision of FCI Staff Regulation as such taking permission or obtaining approval under sec. 33 of the ID Act was not necessary for them and they will not examine any witness to justify their action in this tribunal.

- (6) The workmen representative submitted that admittedly a dispute relating to payment of overtime allowances of the employees of Bihar is pending before this Tribunal bearing reference No. 138/97 and the complainant are concerned workmen to that dispute as such it was mandatory on the part of the opposite party to pay one month salary and also to obtain approval of the Tribunal for the action taken but admittedly management has not given one month salary to the complainant at the time of dismissal and also not obtained any approval from this Tribunal as required under sec. 33(2) (b) of the I.D. Act, 1947. But the management representative submitted that for the serious lapses management has to take stringent action. That is true but as per Sec. 33(2) the management ought to have obtained approval from Tribunal to justify their action and must pay one month salary at the time of dismissal.
- (7) Asking for approval from the Tribunal relating to action of the management would not be little the dignity of the management. The Hon'ble Apex Court has very clearly observed that while a dispute whatever sort is pending before the Tribunal approval must be obtained from the Tribunal to justify their action and a decision to that effect is reported in AIR 2002 SC page-647.
- (8) Considering the facts and circumstances of both the cases I hold that the action of the management in dismissing the complainants is legal and not justified, hence the workmen be treated in continuous service from the date of their dismissal along with all benefits by the opposite party. Accordingly the complaint is allowed and action of the management is held illegal.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1431.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफसीआई के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1, धनबाद के पंचाट वाद सं. 8/2014 (संदर्भ सं. 138/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं. एल-22012/170/1996-आईआर (सी-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1431.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Complaint No. 8/2014 (Arising out of Ref.138/97) of the Cent.Govt. Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of FCI and their workmen, received by the Central Government on 07/07/2015.

[No. L-22012/170/1996-IR (C-II)]

MD. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In The Matter of a Complaint U/S 33(a) of ID Act, 1947

Complainant No. 8 of 2014

Arising out of Ref. No. 138/97

Ministry's Order No. 22012/170/96 IR(C-II)

Ajay Kumar Singh, AG I (D),
S/o Late Baidya Nath Singh,
Vill & P.O. Rajopatti,
Near Telephone Exchange,
Dumra Road, Distt. Sitamarhi ...Complainant

Vs

General Manager (Region),
FCI, Regional Office,
Arunachal Building
Exhibition Road, Patna-1 ...Opp. Party

Present : SRI RANJAN KUMAR SARAN,
Presiding Officer

Appearances:

For complainant : Shri Vijayendra Kumar,
Authorised representative
For Opp. Party : Shri Anshu Sharma, Asstt.
Genl. Manager, Personnel,
RO, FCI Patna

Industry: Food

Dated: 12.6.2015

AWARD

- (1) The complaint is filed under Sec. 33 (1) of the ID Act 1947 for violation of Sec. 33(1) of the ID Act against an order of penalty dated 3.1.2014 of reduction of pay by two stages with cumulative effect by OP during the pendency of reference No 138/97.

- (2) The case of the workman is that a punishment of reduction of pay of two stages with cumulative effect was passed by OP on flimsy allegation and also without proper inquiry and without taking any prior permission from this Tribunal as required under Sec. 33(1) of the ID Act.
- (3) On the other hand the case of the management is that the present workman is not concerned with the dispute and as such the management has liberty to initiate disciplinary action against the workman for lapses and can take any action as per their rules. It is said that they have taken action as per staff regulation as such they will not examine any witness to justify their action.
- (4) The workman representative submitted that dispute relating payment of OTA of the employees is pending before this Tribunal bearing reference 138/97 and reduction of pay has direct relation to the payment of OTA to the workers, therefore, the complainant is connected and concerned with the pending dispute and it was mandatory on the part of the management to take prior permission of this Tribunal as required under Sec. 33(1) of the ID Act before issuing any order of penalty but the OP has failed to take permission as required under Sec. 33(1) as such the order of penalty dated 31.01.2014 is illegal and unjustified. But the management representative submitted that for serious lapses management has to take stringent action. That is true but as per under Sec. 33 (1) the management ought to have obtained prior permission from the Tribunal to justify their action but admittedly it is not done.
- (5) Asking for approval or permission from the Tribunal relating to action of the management would not be little the dignity of the management. The Hon'ble Apex Court has very clearly observed that while a dispute whatever or is pending before the Tribunal approval/permission must be obtained from the Tribunal to justify their action and decision to that effect is reported in AIR 2002 SC page 647.
- (6) Considering the fact and circumstance of the case I hold that the action of the management in awarding punishment of reduction of pay of two stages with cumulative effect is illegal and not justified, hence the workmen is entitled for restoration of his pay. Accordingly the complaint is allowed and action of the management is held illegal.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

SCHEDULE

का.आ. 1432.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ सं. 138/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं. एल-22012/170/1996-आईआर (सी-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1432.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.138/97 of the Cent.Govt. Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 07/07/2015.

[No. - L-22012/170/1996-IR(C-II)]

Md. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No.1), DHANBAD

In the Matter of a Reference U/S 10(1) (D) (2a) of
I.D. Act, 147

Ref No. 138 of 1997

Employers in relation to the management of Food
Corporation of India, Patna

AND

Their workmen

Present:- SRI RANJAN KUMAR SARAN, Presiding officer

Appearances:

For the Employers : Sri Anshu Sharma, AGM

For the workman : Sri V. Kumar, Rep.

State: Bihar

Industry: Food

Dated: 24/3/2015

AWARD

By order No. L.-22012/170/1996-IR (C-II) dated 27.06.1997/15.7.1997, the Central Government in the Ministry of Labour has, in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal.

"Whether the action of the management of FCI, Patna in stopping payment of OTA of double rate of the workmen of Bihar region *w.e.f.* 27.6.85 without giving notice to the Union under section 9A of the I.D. Act is legal and justified? If not, to what relief are the workman entitled and from which date?"

2. The case is received from the Ministry of Labour on 31.07.1997. After receipt of reference, both parties are noticed, the Sponsoring Union files their written statement on 01.08.1997. And the management files their written statement-cum-rejoinder on 06.03.2000. Thereafter rejoinder and document filed by the parties. One witness examined by the management but three witnesses adduce by the workmen.

3. Document of Management marked as M-1 to M-4 workman's document marked as Ext. W-1 to W-4.

4. The short point involved in the case is whether the management of FCI, Patna is justified in stopping OTA at double rate to the workman of Bihar region *w.e.f.* 27.6.85 without giving notice U/S 9 A of I.D. Act.

5. Parties filed written statement, counter and documents, examined witnesses. It is submitted by the workman that stopping OTA at double rate is a conditions of service of workman and prior to stopping, the authority should give notice U/S 9A of the Industrial Dispute Act.

6. The management submitted that, the governor passed orders to stop the same, for which series of litigations are going in various Tribunals. Even the Governor passed orders to stop payment OTA at double rate, it is obligatory on the part of the management to give notice U/s 9A of the I.D. Act. Not giving notice U/s 9A of I.D. Act is a statutory violation and it is very well known to the management.

7. The management by violating the statutory mandate, running litigation on several Courts right from Tribunal to High Court and Apex Court.

8. It is not that the F.C.I. management does not known law. Their callous attitude, adamant approach put more loss to the management, than any gain.

9. The Tribunal has concerned for piling of cases in many Tribunals. Moreover stopping OTA at double rate is a condition of service which has been observed by High Court of Bombay & others.

10. Considering the facts and circumstances of this case, I hold that the action of the management of FCI, Patna in stopping payment of OTA of double rate to the workmen of Bihar region *w.e.f.* 27.6.85 without giving notice to the Union under section 9A of the I.D. Act is not legal and proper.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1433.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 21/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/07/2015 को प्राप्त हुआ था।

[सं. एल-22012/62/2000-आईआर (सीएम-II)]
मो० जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1433.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.21/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Kalipahari (R) Colliery, M/s. ECL, and their workmen, received by the Central Government on 07.07.2015.

[No. L-22012/62/2000-IR (CM-II)]
Md. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : SRI PRAMOD KUMAR MISHRA,
Presiding Officer

Reference No. 21 of 2002

Parties : The management of Kalipahari (R) Coliery
of M/s ECL

Vs

Sri Ramprakash Harijan

Representatives:

For the management : Sri P.K. Das, Ld. Adv. ECL

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated: 18.06.2015

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its letter No.L-22012/62/2000-IR(CM-II) dated 26.07.2002 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Kalipahari (R) Colliery, M/s. Eastern Coalfields Ltd. in dismissing Sh. Ramprakash Harijan, Underground Loader *w.e.f.* 10.07.1997 is legal and justified? If not, to what relief he is entitled to?"

Having received the Order No.L-22012/62/2000-IR(CM-II) dated 26.07.2002 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 21 of 2002 was registered on 13.08.2002 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out Sri P.K. Das, Learned Advocate for the management is present. Neither the workman nor his representative from the union is present.

On perusal of case record I find that workman last appeared before the tribunal on 13.09.2006 through his advocate Mr. N. Ganguly and after that the workman neither appearing nor taking any step. Registered notice was issued on 05.01.2012/17.01.2012 and two date was granted after that. Then again on 09.05.2012 notice was issued and three dates were granted. Last notice was issued on 10.09.2014 *i.e.* about five months ago but none on behalf of the management turned up. Management has also not filed his written statement till date. It appears to me that the union has lost his interest to proceed with the case further. I also think it proper not to pass an order for ex-parte hearing as the union is not taking any step. Under the circumstances I find it just and proper to close the case. As such the case is closed and accordingly a 'No Dispute Award' may be passed.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1434.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय आसनसोल के पंचाट संदर्भ संख्या (44/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं. एल-22012/62/2002-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1434.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 44/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Asansol as

shown in the Annexure, in the industrial dispute between the management of Central Hospital Kalla M/s. ECL, and their workmen, received by the Central Government on 07.07.2015.

[No. L-22012/62/2002-IR (CM-II)]
Md. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : SRI PRAMOD KUMAR MISHRA,
Presiding Officer

Reference No. 44 of 2002

Parties : The management of Central Hospital, Kalla of
M/s ECL

Vs.

Sri Shankar Das

Representatives:

For the Management : Sri P. K. Das, Ld. Adv. ECL

For the union (Workman) : Sri Sayantan Mukherjee

Industry : Coal State : West Bengal

Dated: 19.06.2015

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its letter No. L-22012/62/2002-IR(CM-II) dated 03.10.2002 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the demand of the Colliery Mazdoor Union from the management of ECL, Central Hospital, Kalla for grant of additional increment to Sh. Shankar Das, Hindi Typist for acquiring graduation certificate *w.e.f.* 01.01.1989 instead of 02.01.2001 is just, fair and legal? If so, to what relief is the workman entitled?"

Having received the Order No. L-22012/62/2002-IR(CM-II) dated 03.10.2002 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 44 of 2002 was registered on 28.10.2002 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Shri P. K. Das, Learned Advocate for the management and Shri Sayantan Mukherjee, Learned Advocate for the workman are present.

Shri Mukherjee submits that the case may be closed and a 'No Dispute Award' may be passed as the workman is

now not interested to proceed with the case further. He has also put remarks on the order sheet to that effect. Since the workman is now not interested to proceed with the case, the case is closed and accordingly a 'No Dispute Award' may be passed.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PARMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2015

का.आ. 1435.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण / श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 33/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2015 को प्राप्त हुआ था।

[सं. एल-22012/332/1999-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 7th July, 2015

S.O. 1435.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2000) of the Cent. Govt. Indus. Tribunal-Cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Chora Colliery, M/s. ECL, and their workman, which was received by the Central Government on 07.07.2015.

[No. L-22012/332/1999-IR(CM-II)]

Md. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: Shri Parmod Kumar Mishra,
Presiding Officer

Reference No. 33 of 2000

PARTIES : The management of Chora Colliery, ECL
V/s

Sri Sidhinath Mukherjee

REPRESENTATIVES:

For the management: Shri P. K. Goswami, Ld.
Advocate, ECL

For the union (Workman): Shri Rakesh Kumar, President,
KMC

Industry : Coal

State : West Bengal

Dated : 22.06.2015

AWARD

In exercise of powers conferred by clause (d) of sub-section 1 and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/332/1999-IR(CM-II) dated 23.02.2002/07.03.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Chora Colliery M/s. Eastern Coalfields Ltd. in dismissing Sh. Sidhinath Mukherjee, workman from service is legal and justified? If not, to what relief the workman is entitled?"

Having received the Order No. L-22012/332/1999-IR(CM-II) dated 23.02.2000/07.03.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 33 of 2000 was registered on 18.04.2000. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative and filed their separate sets of written statement in support of their respective claims.

The workman in his written statement has stated that Shri Sidhinath Mukherjee was a permanent workman of Chora OCP under Kenda Area of Eastern Coalfields Limited. Shri Sidhinath Mukherjee was ill and he was treated at S.D. Hospital, Asansol. He was suffering from Pulmonary T.B. with effect from 31.01.1996. After his recovery from illness he reported for his duty on 17.05.1997. But instead of allowing him to join duty, he was dismissed from service on 30.08.1997. The enquiry was held *ex-parte*. The workman was not given opportunity to prove his innocence and thus, there was violation of natural justice. The punishment of dismissal is very harsh and it is disproportionate for his absence for only 28 days. Management in so many cases of unauthorized absence for more than a year has allowed to resume duty. Shri Sidhinath Mukherjee was un-lawfully dismissed from duty. The workman has prayed that he should be re-instated in his duty with all consequential benefits.

On the other hand, the management has stated in his written statement that Shri Sidhinath Mukherjee has been dismissed from service for his unauthorized absence. He was issued a Charge Sheet bearing Reference No. CH.OCP/Agent/WO/96/35 dated 24.02.1996/27.02.1996 for his offence of misconduct. The concerned workman was dismissed from service on 30.08.1997 and the dispute was raised after one year. It was not a fact that the workman was not given opportunity to defend himself rather he denied the co-operation of the Management. The Home Address of the workman is near Dubrajpur in the District

of Birbhum and Suri Sadar Hospital is very near from his home but the concerned workman got a medical certificate from Asansol S.D. Hospital which is about 100 K.Ms away from the residence of the workman.

On the way from Dubrajpur to Asansol there are many company's Hospitals but the concerned workman did not avail the same. The concerned workman has absented himself unauthorizedly and therefore after enquiry he was dismissed from service which is lawful and justified. The workman is not entitled for any consequential benefits.

The Union filed photo copies of workman's Identity Card, Charge Sheet, Letter of Dismissal from service, Receipt of Acknowledgement of the Application, copy of Memorandum, Letter of Director (Personnel) ECL, copy of Appointment Letter, copy of Voter I.D., copy of the Certificate of the Treatment issued by the S.D. Hospital, Asansol, copy of the Rejoinder submitted by the Union to Asst. Labour Commissioner (Central), Raniganj. The workman has also filed affidavit in his oral evidence. He has been cross-examined by the Management.

Management has not filed any documentary of oral evidence.

I have heard the argument of Shri Rakesh Kumar, Learned union representative and also of Shri P. K. Goswami, Learned Advocate on behalf to the management.

Shri Rakesh Kumar argued that the workman was absent only for 28 days in compelling situation as he was suffering from T.B. He was under treatment. Therefore, he could not come to his duty place and when he reported for duty to the competent authority, instead of allowing him to join duty, the management held an *ex-parte* enquiry and passed Dismissal Order which is very harsh and disproportionate to the fault if any. Besides, he argued that the workman was not given any opportunity to defend the allegations brought against him by the management. As per the Memorandum of Settlement if any workman has absented for nine months he would be permitted to join duty and no disciplinary action is required to be taken against the workman.

On the other hand, Shri P. K. Goswami, Advocate for the management argued that the concerned workman had procured a medical certificate as got himself treated at S. D. Hospital at Anansol when there are many Company's Hospitals are situated nearby. The workman had deliberately avoided the same to justify his unauthorized absence in unlawful manner. On cross-examination by the management the employee admitted that he was doing private tuition, therefore he is not entitled for any back wages.

It is an admitted fact that the delinquent employee Shri Sidhinath Mukherjee was a permanent employee at Chora Colliery of ECL. This fact is also clear in his Appointment letter issued by ECL and in his identity card. The case of Union is that the workman had absented only for 28 days for which he has been dismissed from service after holding *ex-parte* domestic enquiry. Whereas the case of management is that unauthorized absence is misconduct therefore after conducting domestic enquiry the workman was dismissed.

Though the case of workman in Para 6 of his written statement is that the delinquent workman had absented only for 28 days since 31.01.1996 to 27.02.1996, but in Para 5 of his Written statement the workman has stated that he reported for his duty on 17.05.1997. The Medical certificate issued by the doctor of S.D. Hospital, Asansol is that Shri Sidhinath Mukherjee during medical treatment since 31.01.1996 as a out-door patient and he was advised rest. Shri Sidhinath Mukherjee was examined on 17.05.1997 and was found fit for duty. It is not mentioned in the medical certificate upto which date, Shri Sidhinath Mukherjee was advised rest. Besides this, he was treated as an outdoor patient. It shows that he was not admitted in the said Hospital for medical treatment as an in-door patient. The medical certificate is not supported by any prescription or treatment papers of the Hospital. This medical certificate does not inspire confidence.

Even in the written statement of the management the period of absence of the delinquent employee is not mentioned. The delinquent employee was issued Charge Sheet No. CH.OCP/Agent/WO/96/35 dated 24.02.1996/27.02.1996. In the Charge Sheet the period of absence has not been mentioned. Simply it has been mentioned that Shri Sidhinath Mukherjee was absence since 31.01.1996. The total period of absence has not been clearly mentioned in the Charge Sheet.

The Charge Sheet is a charter of disciplinary action. The domestic enquiry commences with the services of Charge Sheet. In other words, before proceeding with the domestic enquiry against the delinquent workman he must be informed clearly, precisely and accurately all the charges leveled against him. It is the duty of the employer to intimate the delinquent employee not only the precise nature of the Charge Sheet but also he should be provided with the document on which the charges are based. This is more necessary when the charges are of general nature and pertain to account maintained over a period of time. The Charge Sheet should specifically set out all charges and a Show-Cause letter should also be issued to the delinquent workman without which he can not defend himself. Object of this requirement is that the workman must know what he is charged with and to provide opportunity to meet the charges and to defend himself by giving proper explanation after knowing the nature of the offence with which he was charged otherwise it will amount to condemn, unheard. For fair hearing a precise and genuine catalogue of charges should be informed so that the persons charged can understand and may think over effectively. If the charges are not precise and indefinite the enquiry would not be fair and just enquiry. After serving the Charge Sheet the delinquent workman should further be given sufficient opportunity to enable him to give a proper explanation and defend himself. The employer can not justify his action to any amount that those are contained in the Charge Sheet. In Charge Sheet which fails to comply with the requirement of principle of natural justice is not a Charge Sheet at all. In order to be able to take part in the enquiry the charged workman must have notice of date, time and venue. Even if any employee did fail to submit his reply to the Charge

Sheet the enquiry officer is not absolved from his duty to send notice to the delinquent employee informing him about date, time and venue of the enquiry so that the workman may cross-examine the witnesses produced against him. Non-compliance of above requirement would be violative of rules of natural justice.

The Charge Sheet does not disclose total period of absence of the delinquent workman which is a paramount fact which ought be mentioned in the Charge Sheet. As per rules 28(1) of the Standing Order of ECL the charge Sheeted workman must be given a period of not less than 3 days time for his explanation. But on perusal of Charge Sheet page No. WE-II it is clear that he has been given only 48 hours which is in clear violation of Standing Order of ECL itself. The workman has questioned fairness of domestic enquiry in his written statement.

Shri Rakesh Kumar argued that workman has not been supplied with a copy of enquiry proceeding and enquiry report. It is evident from records that the management has not even filed a copy of enquiry proceedings and enquiry report.

Hon'ble Supreme Court in *Union of India Vs S.K. Kapur* (2011) 4 SCC 589 as held "it is total principal of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the Charge Sheeted employee so that he may have a chance of rebut the same."

In view of Hon'ble Supreme Court the management ought to have supplied copies of departmental enquiry proceedings and enquiry report. Non-compliance of this mandatory provision is clear violation of principle of natural justice.

Where different categories of penalties can be imposed one of which is dismissal from service. Disciplinary authority perforce is required to consult himself for selecting the imposition of appropriate penalty. From out of range of penalties available that can be imposed having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches to the conclusion that having regard to the nature, content and magnitude of the fault committed by the delinquent concerned, it would be absolutely unjust and unreasonable to punish to the maximum penalty of dismissal from service.

If lesser penalty is imposed then the delinquent employee can be faithful in discharging of his duties in future. Where precise period of unauthorized absence is unknown to the management, then in such case, the punishment of dismissal for such unauthorized absence is too harsh and rather shocking. Besides, as per Memorandum of Settlement if any employee is absent even for 9 months he can be allowed to join his duty. It is essential before imposing the punishment on the delinquent the disciplinary authority must apply his mind to the records of proceedings, enquiry report of the enquiry officer and then modulate the quantum of punishment. The punishment must be at par with the nature and gravity of the misconduct proved against him. It is also relevant to mention that before imposing the penalty to any delinquent workman Show-Cause notice must be served to the delinquent workman which is mandatory in law. It is apparent from records that Show-Cause notice has not been issued to the concerned workman before imposing penalty of dismissal.

The workman has not pleaded in his written statement anywhere that he was not gainfully employed anywhere. The burden of proof that workman was not gainfully employed is initially on the workman. Rather Shri Sidhinath Mukherjee has admitted in his cross-examination that he was doing private tuition. Therefore he is not entitled for back wages. But this fact should also be kept in mind that management has filed written statement after lapse of many years. This reference is of the year 2000. Therefore, instead of back wages the workman should be awarded with cash compension.

In view of discussion as above, I think it just and proper to modify and substitute the punishment exercising the Power under section 11(A) of Industrial Dispute Act, 1947. The impugned order of dismissal is set-a-side. Management is directed to reinsate Shri Sidhinath Mukherjee with all consequential benefits but without back wages. I think it proper that the delinquent workman be imposed a stoppage of two increments without cumulative effect. The workman will get Rs. 5,00,000/- (Rupees Five Lakhs Only) as compensation instead of back wages.

ORDER

Let an "Award" be and the same is passed as per above discussion. Second the copies of the order to the Govt. of India, Ministry of Labour, New Delh for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1436.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स नेशनल इन्श्योरेंस कंपनी लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 16/2009) प्रकाशित करती है जो केन्द्रीय सरकार को 03.07.2015 को प्राप्त हुआ था।

[सं. एल-17012/57/2008-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th July, 2015

S.O. 1436.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2009) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. National Insurance Company Ltd. and their workman, which was received by the Central Government on 03.07.2015.

[No. L-17012/57/2008-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/16/2009

Date: 04.02.2015

Party No. 1 : The Regional Manager,

National Insurance Company Ltd.,

Mangala Market, 2nd Floor,
Dharampeth Extension,
Nagpur-440010

Versus

Party No. : Shri Pramod N. Yelamanchiwar,
R/o 25, Puroshottam Apartment,
Sita Nagar, Nagpur

AWARD

(Dated: 4th February, 2015)

In exercise of the power conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of National Insurance Company Ltd. and their workman, Shri P.N. Yelamanchiwar, for adjudication, as per letter No. L-17012/57/2008-IR(M) dated 15.04.2009, with the following schedule:—

"Whether the action of the management of National Insurance Company in imposing the penalty of "Dismissal from Service" w.e.f. 29.08.2007 on Shri P.N. Yelamanchiwar, Assistant, Nagpur DOV is just and legal? What relief the workman is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which the workman, Shri P.N. Yelamanchiwar, ("the workman" in short) filed the statement of claim and the management of National Insurance Company Ltd. ("party No. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he was employed as a clerk at D.O.B. in the year 2003-2004 in category Assistant 'C' and during his entire service tenure, he was not served with any charge sheet, memo or warning except the impugned charge sheet and his service record was clean and unblemished and he was served with the charge sheet dated 26.05.2005, but annexure to the charge sheet and documents were not supplied to him in spite of his demand and there was violation of the principles of natural justice and the concerned officer of the party No. 1 and some of the union office bearers pressurized him to tender an apology, so that his service could be saved and further action would not be taken and though he went on insisting that false charges to have been levelled against him with the only intention to get rid of him, the officer of party No. 1 and the office bearers of the union did not pay any heed to the same and insisted him to tender apology and during the relevant period, he has under terrible mental pressure and the union. "The General Insurance Employees Union" encashed his mental situation and pressurized him to tender apology against his wish and even though he did not commit any misconduct, much less as alleged and he was served with the notice of the enquiry with intimation of the appointment of Shri M.B. Mishra, the Deputy Regional Manager and Smt. Bidichandini

as the Enquiry Officer and the Presenting Officer respectively and some officers of the party No. 1 and some office bearers of the union took him before the Enquiry Officer and pressurized him to submit an apology letter and the letter was dictated by the Enquiry Officer and the Enquiry Officer, the office bearers of the union and the officers of the party No. 1 assured him that the submission of the apology letter would be a formality and nothing would happen to him and he would be exonerated from the charges and believing their version, he submitted a conditional apology letter and as the apology letter was conditional, the same was meaningless and the Disciplinary Authority was duty bound to conduct a full-fledged enquiry as per the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 and by following the principles of natural justice, but the Authority gave a complete to by to the same and hence, the entire enquiry and the order of dismissal dated 29.08.2007 are void ab-initio and liable to be set aside.

The further case of the workman is that he was never served with any notice of the enquiry and he was not given a chance to submit his reply to the charge sheet and he was not given the opportunity to engage defence representative and no chance was given to him to defend the charges, to cross-examine the management witness and to examine witness in his defence and the enquiry was conducted behind his back and he was not paid the subsistence allowance as per law and the departmental enquiry conducted by the party No. 1 was infact not an inquiry, but an eye wash and party No. 1 failed to supply him copy of the enquiry report submitted by the enquiry officer and 2nd show cause notice, before acceptance of the findings of the enquiry officer and passing the order of punishment dated 29.08.2007 and the enquiry conducted against him was against the principles of natural justice and the order of punishment dated 29.08.2007 is bad in law and is required to be quashed and set aside and after his dismissal from services, he is not gainfully employed.

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party No. 1 in the written statement, after denying the adverse allegations has pleaded *inter-alia* that the workman was never pressurized by any of its officers or by some of the office bearers of the union and the apology letter and the sbsequent admission of the charges before the Enquiry Officer were all voluntarily done by the workman, without any influence or presence from any quarter and the workman first having admitted his guilt, now wants to wriggle out from the same on some pretext or the other and an amount of Rs. 1,15,660/- was misappropriated by the workman by forging signature and rubber stamp of the bank and on 09.06.2005, the workman submitted his reply to the memorandum of charge sheet dated 26.5.2005 and accepted all the five charges levelled

against him and in his reply, he tried to explain the compelling circumstances, which resulted in misappropriation of the amount of Rs. 1,15,660/- by him and even though, the workman admitted the charges in his reply, it went ahead with the departmental enquiry and at the initial stage of the enquiry, *i.e.*, on 13.10.2005, the workman admitted the service of the charge sheet upon him before the Enquiry Officer and he also admitted all the charges levelled against him and thereafter, the Enquiry Officer again put specific question to the workman as to whether he (workman) accepts all the five charges levelled against him in the charge sheet and in answer to such specific question, the workman specifically stated to have accepted all the five charges and hence, the plea advanced by him that he was pressurized by its officer and some office bearers of the union is an afterthought and humbug and in his application filed by the workman before the Assistant Labour Commissioner for raising the dispute, the workman had not made any allegation against any of its officers of pressurizing him to tender apology and in his said application dated 14.12.2007, he had specifically alleged that the office bearers of the General Insurance Employees Union, Western Zone had pressurized him to tender apology and to admit the guilt and he was under mental pressure and the allegations made by the workman are vague and are general allegation without naming anybody as to who had exerted such pressure on him and moreover, the workman had deposited an amount of Rs. 84,909/- by two demand drafts, out of the total misappropriated amount of Rs. 1,15,660/- with it on 22.09.2004 and the workman had not only admitted his guilt, but also, had acted upon it and paid some of the amount.

It is further pleaded by the party No. 1 that there was no condition in the apology submitted by the workman and the same was unconditional and as per the Rules, no enquiry needs to be held or conduct for the charges admitted by the charge sheeted employee and as the workman had admitted all the five charges, it was not necessary for the Enquiry Officer to proceed further in the enquiry and as such, there was no violation of any principles of natural justice and the order of dismissal dated 29.08.2007 is perfectly legal and proper and deserves no interference and the allegations of non-supply of the inquiry is not true and the notice of the enquiry was duly served on the workman and all the papers and documents were given to the workman and he attended the enquiry pursuant to the notice issued to him and admitted the charges levelled against him before the Enquiry Officer and he was paid the entire subsistence allowance as per law and the workman is not entitled to any relief.

4. No rejoinder to the written statement was filed by the workman.

5. As this is a case of dismissal of the workman from services, as a punishment imposed against him in the

departmental inquiry conducted against him, the fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and *vide* order dated 16.10.2014, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

6. It is to be mentioned here that no argument on the perversity of the findings of the Enquiry Officer and the proportionality of the punishment was advanced by either of the parties. The reference was fixed to 28.11.2014 for hearing of argument on the questions of perversity of findings and the quantum of punishment, but on the said date, both the parties remained absent. However, in the interest of justice and to give the parties a chance to take part in the case, the reference was adjourned to 12.01.2005 for argument on the merit of the case. On 12.01.2015 also, the parties remained absent and none appeared on behalf of either of the parties to make argument. So, on 12.01.2015, the case was closed and fixed for award.

7. As no argument has been made by the parties, I think it proper to mention the settled principles regarding the power of a Tribunal in interfering with punishment awarded by the competent authority in departmental proceedings, as enunciated by the Hon'ble Apex Court.

In a number of decisions, the Hon'ble Apex Court have held that:

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

It is also settled by the Hon'ble Apex Court that:—

"A review of the above legal position would establish that the disciplinary authority and on appeal, the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to

maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

"In departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its in own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process."

It is also settled beyond doubt by the Hon'ble Apex Court in number of decisions that:—

"Departmental enquiry is not bound by strict rules of Evidence Act, but by fair play and natural justice. Only total absence, but not sufficiency of evidence before Tribunal is ground for interference. If the enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the court and in a department enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability".

8. Judging the present case in hand with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above, it is found that the workman had admitted all the five charges levelled against him before the Enquiry Officer voluntarily and unconditionally and the Enquiry Officer has based his findings on the evidence on record of the enquiry, after taking into consideration of the voluntary and unconditional admission of all the five charges by the workman and the Enquiry Officer has also assigned cogent reasons in support of his findings. It is also found that this is not a case of no evidence at all or that the findings of the Enquiry Officer are totally against the whole body of the evidence on record of the enquiry. Hence, the findings of the Enquiry Officer cannot be said to be perverse.

9. So far the proportionality of the punishment is concerned, it is found that commission of grave misconduct of misappropriation of cash to the tune of Rs. 1,15,660/- of the Insurance Company has been proved against the workman in a properly conducted departmental enquiry against him. Hence, the punishment of dismissal from service cannot be said to be shockingly disproportionate to the gravity of the misconduct committed by him. Hence, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:

ORDER

The action of the management of National Insurance Company in imposing the penalty of "Dismissal from service" w.e.f. 29.8.2007 on Shri P.N. Yelmanniwar, Assistant, Nagpur D O V is just and legal. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1437.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स आई.ओ.सी.एल. (असम ऑयल डिविजन) के प्रबंधन के संबंध में निर्योक्त औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट

(संदर्भ संख्या 20/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.07.2015 को प्राप्त हुआ था।

[सं. एल.30011/68/2012-आई.आर. (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th July, 2015

S.O. 1437.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2013) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. IOCL (Assam Oil Division) and their workman, which was received by the Central Government on 03.07.2015.

[No. L-30011/68/2012-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI.

Present

Shri L.C. Dey, M.A., LL.B.,
Presiding Officer,
CGIT-Cum-Labour Court, Guwahati,
In the matter of an Industrial Dispute between:—
The Management of IOCL (Assam Oil Division), Digboi,

-VS-

Their Workman Sri Nirman Sarmah represented by the President AOC Labour Union, Digboi.

Appearance

For the Management: Mr. S.N. Sarma, Sr. Advocate.
Mr. A. Jahid, Advocate.

For the Workman: Mr. S.M. Rahman, Advocate.

Ref. Case No. 20 of 2013

ORDER

27.5.2015.

The Management is represented by Mr. A. Jahid, learned Advocate. The O.P/Workman is absent without any step.

By this order it is proposed to dispose of the matter regarding framing of preliminary issue on the petition No. 107/14 dated 26.3.2014 which was registered being Misc. Case No. 2/14 filed by the petitioner Management. Upon hearing both the sides the said Misc. Case (2/14) was allowed of on contest framing the following preliminary issues:

(i) Whether the Petitioner/Management has held the domestic enquiry against the workman Nirman Sarmah fairly

in accordance of the principles of natural justice and the procedure adopted in the Standing Order of the petitioner company?

(ii) Whether the present reference is maintainable in law? The Ministry of Labour, Government of India referred this dispute between the Management of IOCL (AOD), Digboi and their workman Sri Nirman Sarmah under Clased of sub-section (1) and sub-section (2A) of Section 10 of the I.D. Act, 1947 for adjudication. The schedule of this reference is as under:

SCHEDULE

"Whether the action of the management of IOCL (Assam Oil Division), Digboi, in dismissing the services of Shri Nirman Sarmah *w.e.f.* 30.06.2011 is legal and justified? What relief the workman is entitled to?"

The case of the workman, in short, is that Late Akhil Sarmah, employee of Indian Oil Corporation Ltd. (Assam Oil Division) being employee No. 33833 who died prematurely on 14.11.04. As per superannuation Benefit Fund Scheme (hereinafter called SBFS) & as such, the family of Late Akhil Sarmah is entitled to various benefits on the basis of option therein. Accordingly the mother of the workman agreed to the benefit available in option R-III of the Superannuation Benefit Scheme and requested the IOCL(AOD) management to provide necessary prescribed option Form for the workman. But the Management did neither offer any job to the workman nor they issue any application Form till September, 2005, but the Officer concerned of the management verbally told the mother of the workman that the posts are available for graduate level and if the mother of the workman provide any certificate showing educational qualification as graduate they may provide the job. The workman mentioned that as per Rule of the Company, the management has to offer the job within six months to the mother of the workman but no any such offer or nor any communication made to the mother of the workman, and due to death of his father the workman suffered lots and became penyles for which the workman need a job to rescue his family with huge burden of credit and liabilities. The workman also stated that under such compelling circumstances they lost their sense of reasoning and as a result his other accepted ill advise of their so called well wishers and collected one certificate in order to substantiate qualification of the workman as graduate. At the time of death of his father the workman was doing DOEACC 'O' Level after completing his 10+2 at New Delhi which is in the knowledge of the management as well as they know that all the records related to the dependents are still maintained at the establishment even then the management did not object to filing of fake graduation certificate at the time of applying for the job. Subsequently the management sent the workman for one year training by providing a monthly stipend of Rs. 5000/- which he successfully completed and he was offered a job of

Jr. Clerk-cum-Typist. After 4 years the management charge sheeted the workman for filing graduation certificate which he never denied and explained the circumstances to do so. He also added that he was asked for a job on the basis of his eligible qualification and as he was entitled to the aforesaid 'SBFS' Scheme-option R-III which was meant for the rehabilitation of the family of the employee who died prematurely while in service. If he was offered the job on the basis of the actual qualification within a period of six months and hence, the situation of submission of fake certificate by his mother would not have arisen at all.

The workman further stated that in spite of confession made before an enquiry the management terminated him without showing any sympathy to the victim family of Late Akhil Sarmah. Thereafter the workman put his case before the AOC Labour Union, Digboi with a hope of review punishment awarded against him. The Union also found the punishment too extreme and unjustified as his recruitment was done under rehabilitation Scheme to provide relief to his family as such, the workman contended that action of the management is illegal and not justified on the ground that the provision of misconduct given in XIV(2) XX in the Certified Standing Order is applicable to the employee who applied for the post invited through employment exchange or other media wherein the terms and conditions are specifically mentioned; that the management did not give any written guidelines to be followed by the workman at the time of applying rehabilitation Scheme, that the charges of misconduct brought against the workman is not justified as he did not commit any misconduct during his service period as at the time of submission of certificate the workman was not the employee under the management; that the order of dismissal is not justified and unjust as there was no act or conduct prejudice or likely to prejudice to the interest of the management; that the father of the workman had contributed an amount every month from his salary till his death to the rehabilitation Scheme and hence, the workman is entitled to get employment under the said Scheme. Hence, the workman prayed to pass an award directing the management to appoint the workman against some other post as per SBF Scheme on the basis of his actual qualification.

The management contested the case by filing their W.S. Stating, inter-alia, that the reference made by the Central Government is not maintainable and that the reference is bad for which it can not be adjudicated. The management denied all the averments made in the claim statement submitted by the workman except which are admitted by them. The management stated that it has a Scheme known "Superannuation Benefit Fund Scheme" (SBFS) which was introduced with effect from November, 1987 in respect of the officers of the Corporation; and in pursuant a settlement dated 22.04.1996. As per the said Scheme all the employees have to make contribution towards the fund as specified in

the Scheme. Annexure-1 to the said Scheme provides the rehabilitation of the family of the employees deceased employee or those suffering permanent total disablement while in service and three options are there one of which will have to be opted by the female spouse within the six months of the death of the employee, and option once exercised shall be final. Option 3 provides for employment of eligible, suitable and dependant unmarried son/daughter of the deceased employee and this option must be sought within six months of the death or permanent disablement of the employee and be sought in the prescribed format and that the employees under the scheme will be offered within a period of three years. The management stated that the father of the workman namely Akhil Sarmah employee No. 33833 expired on 14.11.04 while in service. Thereafter the mother of the workman vide her letter dated 07.07.2005 opted for 3rd option for appointment of her son i.e. the present workman, and in the said Form she had mentioned specifically that qualification of her son is graduate (B.A.) along with the application, the applicant (mother of the workman) forwarded the attested mark sheet shown to have been issued by the Gauhati University and pass certificate from Arya Vidyapeeth College, Guwahati. Though the option was opted belatedly, yet on humanitarian ground the same was accepted by the Company. After death of the father of the workman his wife was paid Rs. 11,88,640.56 towards Provident Fund, which she had received on 21.4.2005. Similarly she was paid a sum of Rs. 3,50,000/- towards Gratuity, and further an amount of Rs. 66,594/- towards Group Savings Linked Insurance and Rs. 1,49,655/- towards Leave Dues to the deceased. Thus total sum of Rs. 17,54,889.56 was paid to the mother of the deceased.

On receipt of the application from the mother of the workman, the educational certificate, mark sheets are verified with originals produced before the Officer of the Company and thereafter the workman was called for personal hearing on 16.10.2006 while the workman was asked to fill up the candidate's declaration form. In the said form it is specifically mentioned that any false or untrue declaration will make the candidate/service of the candidate liable to be cancelled/terminated without giving any notice and the workman filled up the said declaration form and declared that he had passed graduation from Gauhati University in the year 2005. Accordingly the workman was offered traineeship for the post of Jr. Clerk/typist vide letter dated 1.11.2006 and on completion of one year training period the workman was offered the post of Jr. Clerk/typist in Grade-IV vide letter dated 26.11.2007 on probation which the workman accepted and accordingly furnished the attestation form on 03.12.2007 wherein also the workman declared that he had passed graduation from Gauhati University in 2005. The management added that in the year 2009 rumors circulated in an around that many employees of the Corporation have joined in the service by producing fake certificate. As such, the management decided to verify

the certificates of the employees with the authorities. Accordingly the management wrote to the Register, Gauhati University as well as to the Principal of Arya Vidyapeeth College, Guwahati to verify the certificates provided by the workman at the time of offering him the job under the scheme. Both the Gauhati University as well as Arya Vidyapeeth College wrote back to the management, informing that the certificate produced by the workman are not genuine and the same are fake. Thus it became apparent that both the workman and his mother has willfully misled the Company to obtain employment in higher grade, by producing false certificate. Accordingly the management issued charge sheet to the workman on 2.6.2010 asking him as to why disciplinary action should not be taken against him as per Certified Standing Order of the Corporation and for obtaining appointment by submission of false or fake document. The workman in his reply to the charge sheet admitted that his mother had mistakenly mentioned him as Graduate though he actually has passed 10+2, and that to get a job he had also declared himself as a graduate. The workman with the above confession prayed to deal with the matter with compassionate and sympathetically. Since the misconduct committed by the workman was grave nature, the management decided to give him an opportunity by holding a domestic enquiry and accordingly the Enquiry Officer started the enquiry. In the enquiry proceeding the workman was present at the beginning from the enquiry while he admitted the charges levelled against him. The workman took the assistance of Mr. Arup Kumar Mishra, co-worker in the enquiry. Thereafter the Enquiry Officer decided to take evidence of the management. Accordingly the management examined one witness who has produced all the certificates produced by the workman and the letters received from the Guwahati University and the Arya Vidyapeeth College along with some other relevant documents, but the workman refused to cross-examine the said management witness. After closing the evidence of management side the Enquiry Officer asked to examine his witnesses while the workman denied to examine any witness and he gave his own statement before the Enquiry Officer. That the management contended that all the opportunities was offered to the workman to defend his case and the entire enquiry was conducted in compliance of the principle of natural justice and both the workman and his co-worker had put their signatures in all the pages of the enquiry proceeding. On conclusion of the enquiry, the Enquiry Officer gave his findings that the charges levelled against him were successfully proved against the workman. The management on receipt of the findings of the Enquiry Officer forwarded the same to the workman for submission of his representation, if any. The workman in reply submitted his representation on 18.4.2011 wherein he has not alleged anything against the domestic enquiry and/or finding of the Enquiry Officer but only prayed for consideration of his appointment. Thereafter the Disciplinary Authority on receipt of the explanation

from the workman taken into account of the documents including the proceeding of the departmental enquiry, and the representation of the workman and considering the gravity of the offence committed by him dismiss the workman from his service with effect from 30.6.2011.

The management further pleaded that they are fully justified in dismissing the workman from his service for the offence committed by him and no leniency may be shown to the workman considering the facts and circumstances of the case, as it will create a precedent for other job seekers to obtain job by producing false education qualification certificates in various organizations. The management denied the averment made in paragraphs-1,2,3,4 & 8 of the claim statement submitted by the workman.

The management also contended that after death of the father of the workman the management paid an amount of Rs. 17,54,899.56 and hence, the plea of the workman that under compelling circumstances he along with his mother compelled to obtain forge certificate, cannot be accepted since the workman was aware that being a matriculate, he would not get a job in higher level and as such, they committed fraud and submitted false certificate. The management also mentioned that since the workman got the job misleading the Company, knowing fully well that the submission of false document is an offence and himself declaring that if his documents are found to be false, then he is liable to be terminated. It is also pleaded by the management that the father of the workman did not furnish the fact that his son (workman) had been taking computer training at Delhi while taking educational allowance. It is also pointed out by the management that although the mother of the workman would submit option within 3 months she submitted her option No.3 under the aforementioned scheme after 8 months of the death of her husband, giving false education qualification certificate, and had the mother of the workman would have given the actual educational qualification the workman would get the appropriate job within 3 years as per provision of the Scheme since the workman with intent to make illegal gain resorted to irregularities and hence, the ground shown in para-10 of the claim statement of the workman that the dismissal of the workman is not legal and justified, are not correct and frivolous as such, the action of the workman itself is pre-judicial to the interest of the Corporation as well as other similarly situated job seekers and the question of faithful discharge of duties is not primary question. It is also added by the management that the question of keeping the workman in some lower job at this stage does not arise as the conduct of the workman has forced the management to lose all confidence and trust repose to the workman and as such, the question of lesser punishment for such gross misconduct does not arise. Hence, the management prayed to frame preliminary issue regarding the fairness of the domestic enquiry and decide the same at first, if the said

issue is decided against the management, the management may be allowed to contest the reference on merit.

The management in order to prove their petition No. 107/14 dated 26-3-14 examined 2 witnesses as MW.1 & MW.2. The workman was also given opportunity to adduce his evidence *vide* order dated 5.1.15 and since that date the workman had been taking time once again and on 3.3.15 the workman by filing the petition preferred to examine one of his witnesses namely Sri Tarun Hazarika, a employee of IOC (AOD), Digboi and at the instance of the workman summon was issued upon the witness T. Hazarika, and on the following date the workman prayed for time for hearing showing cause of absence of the witness T. Hazarika. Accordingly the workman was given last time. On the subsequent date *i.e.* 20.4.2015 the workman remained absent without any step and hence, the reference proceeded *ex-parte* against the workman. Subsequently on 15.5.15 the workman was also found absent while the management was heard *ex-parte*.

I have gone through the entire case record and the documents submitted by both the parties along with the evidence adduced by the management, and the issues are discussed and decided as under:

Issue No. (I)

The materials on record shows that the management witness No. 1 Mr. Chandra Sekhar Chakrabarty was appointed as Enquiry Officer to hold the enquiry against the delinquent workman Sri Nirman Sarma *vide* Exhibit-1. The management on receipt of a rumor circulated in and around Digboi that many employees of the Corporation had joined in the service by producing fake certificates and hence, it decided to verify the certificate of the employees with the authorities concerned. Accordingly the management took up the matter with the Register, Gauhati University as well as the Principal of Arya Vidyapeeth College, Guwahati to verify the certificates and marksheets provided by the workman at the time of offering the job to the workman under SBFS Scheme. Upon which the Controller of Examination, Gauhati University submitted the report *vide* Exhibit-7(1) & 7(m) that on verification of the photo copy of the mark sheets of B.A. Part-II Final examination bearing No. 411 of the year 2005 in respect of Nirman Sarmah with record, the contents were found correct, and the result not tallied with their records. Arya Vidyapeeth College also informed the management *vide* their letter dated 12.3.2010 that on verification from their documents they found the certificated not to be correct. On the basis of the report of the Gauhati University and the Arya Vidyapeeth College, Guwahati, the management initiated domestic enquiry against the workman issuing show cause-cum-charge sheet against the workman *vide* Exhibit-2. While the workman submitted his reply to the charge sheet admitting the charges framed

against him vide Exhibit-3 wherein the workman categorically mentioned that his uneducated mother while filing option form mistakenly mentioned the workman as a graduate since at that time he was undergoing on further education after 10+2 pre-graduation course only; and that under compelling circumstances both he and his mother lost their senses of reasoning and since his mother already mistakenly mentioned him as a graduate, so everybody started reiterating his status as a graduate and got service somehow; and that out of compulsion for their sustenance survival they continued to reiterate by claiming the workman as graduate, and being frighten by the uncertain prospects of survival, a desperate attempt to win the battle with poverty and the subsequent fear of the ordeals of sustenance, led them resort to calling himself a graduate if that was the only way out without any alternative. In course of enquiry proceeding the Enquiry Officer (MW.1) started enquiry on 31.10.11 at 2 P.M. in the office of the Sr. Terminal Manager, IOCL, Betkuchi TOP, Guwahati in presence of the management representative i.e. Presenting Officer Sri Dinesh Das, Manager (Engg), Guwahati; the workman along with his co-worker Sri Arup Kumar Mishra, while at the beginning of the enquiry, the workman admitted the charges leveled against him and on that day one witness Smthri Runita Goswami was examined as MW 1 in the enquiry who stated that after demise of the father of the workman his mother submitted application dated 7.9.05 vide Exhibit 7(a) intimating the workman for employment under option R-III of SBF Scheme along with 2 documents namely B.A. Pt. II final examination mark sheet (Exhibit-7(b) bearing No. 1539 in the name of the workman Nirman Sarmah bearing Roll No. 411 and B.A. pass certificate vide Exhibit 7(c) issued by Arya Vidyapeeth College. The said management witness also produced the declaration on 16.10.06 submitted by the workman at the time of interview whereby he had declared that his qualification is graduation (B.A.) vide Exhibit 7(d), along with the attestation from Exhibit 7(e) submitted by the workman. The said witness in course of her deposition, in enquiry, has proved the photo copies of B.A. mark sheet and certificate in respect of the workman vide Exhibit 7(g) & Exhibit-7(h) respectively. The management witness No. 1 further mentioned that the workman in presence of his co-worker was allowed to cross-examine the enquiry witness (MW.1) but he did not examine the said enquiry witness; and thereafter the workman was asked whether he had any witness to examine while he declined. After closing of the departmental enquiry the presenting officer Mr. D. Das, Manager (Engg), GIDO submitted a brief note on the enquiry in connection with the charge sheeted employees Sri Nirman Sarmah vide Exhibit-8. Accordingly the Enquiry Officer (MW. 1) prepared the enquiry report vide Exhibit-10 and forwarded the same to the Chief Manager (operation) NEISO vide Exhibit-9. Thereafter the Chief Manager (operation) and the Disciplinary Authority on receipt of the findings of the Enquiry Officer, forwarded the same to the workman vide

Exhibit-12 asking him to submit representation, if any. While the workman submitted his representation on 18.4.11 vide Exhibit-12 wherein he did not allege anything against the domestic enquiry proceeding as well as the findings of the Enquiry Officer, but only prayed for consideration of his appointment. The Disciplinary Authority, on receipt of the representation of the workman taking into account of the documents including the proceeding of the domestic enquiry the findings of the Enquiry Officer along with all the exhibits and the representation submitted by the workman, considered the matter and on the basis of the gravity of the offence committed by the workman dismissed the workman from his service with effect from 30.6.2011 vide letter dated 29.6.11 marked as Exhibit-13.

From the above discussion it is clear that the management in spite of admission of his guilt by the workman conducted departmental proceeding in pursuance of the Constitutional Provision as well as the principle of natural justice it is also seen from the evidence on record as discussed above that in course of enquiry proceeding the workman was given ample opportunity to defend him as well as to cross-examine the management witness and also to adduce his defence evidence, if any, but the workman declined to do so. Further the proceeding of the enquiry as well as all the documents proved in course of enquiry proceeding have been proved in this Tribunal and both the enquiry Authority as well as the workman along with his co-worker present with him acknowledged all the documents by putting their signatures thereon as it reveals from the enquiry proceeding marked as Exhibit-7. Further the workman was given ample opportunity to submit his representation forwarding the enquiry proceeding along with the findings of the Enquiry Officer and at this stage the workman did neither alleged nor raise any objection against the enquiry proceeding but prayed for considering his appointment only. Thereafter the Disciplinary Authority considering the report of the Enquiry Officer along with the enquiry proceeding and the documents produced before the Enquiry Officer, and the representation submitted by the workman, on being satisfied the Disciplinary Authority concurred that the findings of the Enquiry Officer that the workman was guilty of the charges, being misconduct under Clause IV(2) (XX) of the Certified Standing Order.

Mr. S.N. Sarma, learned Sr. Advocate for the management during argument submitted that the workman has committed fraud by submitting forged documents to get the employment in the establishment of the management which was admitted by the workman himself both in his explanation and in the enquiry; and that in case of clear admission, the domestic enquiry is not necessary, but the management has initiated the domestic enquiry against the workman and rightly dismissed the workman from service after concurring to the report of the Enquiry Officer along with the documents as well as the representation

submitted by the workman. In support of his contention Mr. Sarma, Learned Sr. Advocate relied upon the decision in SPCV Naidu-Vrs-Jaganath, reported in (1994) 1 SCC 1, wherein it was held that the person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of litigation. Learned Advocate for the management also submitted that it a settled position of law that when charges are admitted by workman, holding the domestic enquiry is an empty formality, and in this regard he has placed the reliance of the judgment of Hon'ble Supreme Court in Central Bank of India-vs-Karunamoy Banerjee, reported in AIR 1968 SC 266, wherein it was observed "when once the workman himself has answered the charges labelled against him, admitted his guilt, in our opinion, there will be nothing more for the management to enquire into". Mr. Sarma, learned Advocate for the management also placed reliance on the judgment in (2005) 5 SCC 337 (Vivekanand Sethi-vs-Chairman, J & K Bank Ltd. & Ors.) wherein it was observed-"The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straightjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case".

Considering the facts and circumstances of the case and having regard to the conduct of the workman as well as his admission of the charges levelled against the workman by the management, the findings of the Enquiry Officer and the submission of Learned Advocate for the management along with the decision of Hon'ble Supreme Court as referred to above it found that the domestic enquiry held against the workman by the management fairly in accordance with the principle of natural justice and the procedure adopted in the Standing Order of the petitioner of the management Company. In the result, this issue is decided in affirmative in favour of the management.

Issue No. (II)

In view of the finding of the above issue that the domestic enquiry is free, fair and in accordance with the principles of natural justice and there is no perversity in the findings of the Enquiry Officer and having regard to the fact that the person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of litigation. Thus it is crystal clear that there is no need to adjudicate the dispute in this Tribunal as it will be futile exercise to proceed with the case further. Considering the facts and circumstances of the case as well as the gravity of the offence of fraud committed by the workman as well as the findings on the issue arrived at as above, it can safely be held that the present reference is not maintainable in law.

Accordingly the preliminary issues framed vide order dated 23.6.2014 have been decided in favour of the management.

Before parting with the discussion, it will not be out of context to mention here that having answered the preliminary issue should the Court see whether in the facts and circumstances of the present case as well as the findings on the preliminary issue, any leniency can be shown to the workman with the punishment. Although the workman in his written statement submitted before this Tribunal as well as in his reply to show cause notice placed before the Enquiry Authority that his case should be considered on humanitarian ground that the job opportunity for matriculate dependent under the SBF Scheme is available at the relevant point of time and the application for option are entertained by the management within a period of six months; and if so was the case then it is the onus of the management to cancel the family of the deceased employee regarding various aspects of rehabilitation Schemes but the management defied the purpose of SBF Scheme at the very beginning and cheated the family of the workman without providing any job to the workman according to his qualification. The workman also pleaded that he was willfully mislead to obtain employment in higher grade by producing false certificate delaying the matter for around one year, the management put harsh terms and conditions of the employment namely graduation etc. The workman also took the plea that the management has not also approached to his family from the very beginning discharging 30 years of long contribution of his father in the establishment, and hence, prayed before this Tribunal to pass necessary award directing the management to reduce punishment to some other form except termination from service so that the family of the deceased Akhil Sarma, the father of the workman would survive as the employment provided to the workman for the very purpose of rehabilitation of a deceased employee.

It is a settled position of law that the power under Section 11A under Industrial Disputes Act, 1947 has to be exercised only when the Tribunal is satisfied with the order of dismissal is not justified. In this regard I am to rely the principle of law laid down in (1987) 4 SCC 691, (C.M.C., Hospital Employees Union-vs-K. Medical Counselor, Valor Associations & Ors), (2003) 3SCC 437(Kendra Vidyalaya Sangathan-vs-Ram Ratan Yadav), (2007) 5 SCC 336 (Additional G.M.H.R.B.H. Electricals Ltd. -vs-S.R. Burde), (2006) 2SCC 541 (Ram Saran-vs-I. G.Police, CRPF) and (2008) 13 SCC 170 (Regional Manager CBI-vs-M.G. Dahir & Ors.) wherefrom it is found that the Hon'ble Supreme Court has held that in such case no leniency can be shown and dismissal is the only punishment for the such offence. In the instant case, admittedly the workman to make illegal gain for himself has produced false documents regarding his educational qualification. It is a settled position of law that fraud vitiates everything. Apparently, the workman by

The case of the claimant/workman, in brief, is that he had been working as casual contingent workman under ONGC, Tripura since 1977-78 to work under Geophysical Party No. 27/31 along with other workmen and continuously worked for a period of 234/235 days on an average in every year with few intentional breaks and he was terminated from service in the year 2001. The workman stated that during his period of service, he had in fact, worked for more than 240 days on an average in every year and the work performed against payment of wages in cash on day to day basis. But the management did not consider their genuine case for appointment on regular basis despite repeated request. On 31.07.01 the Hon'ble Gauhati High

Court passed an order and judgement directing the authority to take proper step for appointment of the workmen on regular basis and also to absorb the retrenched workers in service fill their services are regularized and their contingent employment should be allowed for the maximum days in year. Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been retrenched from service in 2001 without assigning any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act. 1947 allowed the workmen to work less than 240 days in each calendar year and thereby the management deliberately exercised unfair labour practice. Thereafter in a meeting held on 20.1.92 vide No. 11(2)/91-IR resolution No. 6 it was decided that services of the casual workers would be regularized according to the qualification and experience. The management have not complied with the decision contained in the minutes dated 30.10.91 of 58th meeting of ONGC held that the recognized Union, communicated vide No. 11(2)/91-IR dated 20.01.92. Hence, the workman prayed to adjudicate the present reference by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 04.11.13 stating that they have moved before the Hon'ble Gauhati High Court assailing, *inter-alia*, the order or reference and the subsequent notice issued there upon and the Hon'ble High Court passed an interim order dated 07.10.13 staying the further proceeding of the reference. The management also submitted a copy of the order dated 07.10.13 passed by the Hon'ble Gauhati High Court in W.P.(C) No. 5958/13. Accordingly the proceeding of this reference was stayed with effect from 04.11.13 until further order.

On perusal of the letter dated 13.01.15 issued by the Ministry of Labour and Employment along with the copy of the judgement and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P. (C) No. 5958/13 dated 18.11.14, it appears that the Hon'ble Gauhati High Court has been pleased to allow the Writ Petitions preferred by the management of ONGC challenging the claims of the workmen as well as the order of reference and the subsequent notices issued thereupon by this Tribunal on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D. Act, 1947 in conciliation proceeding before the Regional Labour Commissioner (C) on 27th/28th January, 2001 and the same having been acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said

settlement and consequently no reference could have been made for adjudication for the issue raised, and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting no relief to the workman.

Let a copy of this order be forwarded to the Ministry for information and necessary order.

L.C. DEY, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1439.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओएनजीसी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 11/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/07/2015 को प्राप्त हुआ था।

[सं. एल-30012/59/2012-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th July, 2015

S.O. 1439.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2013) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Central Government on 03/07/2015.

[No. L-30012/59/2012-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI

Present:

Shri L.C.Dey. M.A., LLB.,
Presiding Officer,
CGIT-Cum-Labour Court, Guwahati.
In the matter of an Industrial Dispute between:-
The Management of ONGC Limited, Kolkata.

vs.

Their Workman Sri Subodh Deb Barma, Tripura (West).

Ref. Case No. 11 of 2013

ORDER

13.05.2015

The Case Record put up today along with the order No. F.No. L-30012/45/2011-IR(M) dated 13.1.2015 from the Ministry of Labour and Employment along with a copy of the judgement and order (oral) passed by the Hon'ble Gauhati High Court on 18.11.2014 in (1) W.P. (C) No. 5958 of 2013 (2) W.P.(C) No. 7372 of 2013 (3) W.P.(C) No. 7381 of 2013 (4) W.P.(C) No. 7385.2013 by which the Hon'ble Gauhati High Court has been pleased to dispose of the instant reference case (No.11/2013) along with 47 nos. of other reference cases in the matter of an Industrial Dispute between the Management of ONGC Ltd. Kolkata (O.P/ management) and the workman Shri Subodh Deb Barma, (Claimant/workman).

This dispute arose between the employer in relation to the management of ONGC Ltd. and their workmen and the said dispute was referred to be referred to by the Ministry for adjudication *vide* their No.F.No.L-30012/59/2012-IR(M), dated 22.01.13. The schedule of this reference is as under:

"Whether the action of the management of ONGC Limited, in terminating the service of Shri Subodh Deb Barma, Ex-contingent workman engaged in seismic survey work through their Geographical Party w.e.f. 1.7.2001 in presence of settlement dated 27/28.1.2001, is legal and justified? What relief the workman is entitled to?

The case of the claimant/workman, in brief, is that he had been working as casual contingent workman under ONGC, Tripura, since 1978-79 to work under Geophysical Party No. 31 along with other workmen and continuously worked for a period of 236/237 days on an average in every year with intentional breaks and he was terminated from service in the year 2001. The workman stated that during his period of service, he had in fact, worked for more than 240 days on an average in every year and the work performed against payment of wages in cash on day to day basis. But the management did not consider their genuine case for appointment on regular basis despite repeated request. On 31.7.01 the Hon'ble Gauhati High Court passed an order and judgement directing the authority to take proper step for appointment of the workmen on regular basis and also to absorb the retrenched workers in service till their services are regularized and their contingent employment should be allowed for the maximum days in a year. Despite the above order of the Hon'ble High Court the management did not regularize the workmen rather the present workman has been retrenched from service on 2001 without assigning any reason thereof, and the management in order to avoid the statutory obligation as provided u/s 25(F) of the I.D. Act 1947 allowed the workmen to work less than 240 days in each calendar year and thereby the management deliberately exercises unfair labour practice.

Thereafter in a meeting held on 20.1.92 *vide* No. 11(2)/91-IR resolution No. 6 it was decided that services of the casual workers would be regularized according to the qualification and experience. The management have not complied with the decision contained in the minutes dated 30.10.91 of 58th meeting of the ONGC held with the recognized Union, communicated *vide* No.11(2)/91-IR dated 20.1.92. Hence, the workman prayed to adjudicate the present by pronouncing an award in favour of the claimant/workman.

On receipt of the order of reference from the Ministry this reference case was registered and notices were issued upon both the parties who appeared before this Tribunal. The workman submitted his claim statement along with the supporting documents. During pendency of this proceeding the management after obtaining time on few dates submitted a petition on 08.11.13 stating that they have moved before the Hon'ble Gauhati High Court assailing, *inter-alia*, the order or reference and the subsequent notice issued there upon the Hon'ble High Court passed on interim order dated 7.10.13 staying the further proceeding of the reference. The management also submitted a copy of the order dated 7.10.13 passed by the Hon'ble Gauhati High Court in W.P.(C) No. 5958/13. Accordingly the proceeding of this reference was stayed with effect from 08.11.13 until further order.

On perusal of the letter dated 13.1.15 issued by the Ministry of Labour and Employment along with the copy of the judgement and order (oral) passed by the Hon'ble High Court in Writ Petition No. W.P.(C) No. 5958/13 dated 18.11.14, it appears that the Hon'ble Gauhati Court has been pleased to allow the Writ Petitions preferred by the management of ONGC challenging the claim of the workmen as well as the order of reference and the subsequent notices issued thereupon by this Tribunal, on the ground that since the memorandum of settlement arrived at u/s 12(3) of the I.D. Act, 1947 in conciliation proceeding before the Regional Labour Commissioner (C) on 27th/28th January, 2001 and the same having been acted upon by all the concerned parties, there could not have been any occasion for the workmen involved in the writ petitions to raise a further dispute already stood settled as per the said settlement, and consequently no reference could have been made for adjudication for the issue raised; and set aside and quashed the reference under challenge with observation that consequently, the proceeding culminating from the said reference and pending before the Tribunal-cum-Labour Court shall also stand set aside and quashed.

In view of the above circumstances this reference is disposed of granting to relief to the workman.

Let a copy of this order be forwarded to the Ministry for information and necessary order.

L.C. DEY, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1440.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स लाईफ इन्श्योरेंस कॉर्पोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 3/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/07/2015 को प्राप्त हुआ था।

[सं. एल-17012/15/2009-आई आर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th July, 2015

S.O. 1440.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 3/2010) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 03/07/2015.

[No. L-17012/15/2009-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I,
CHANDIGARH**

ID No.3/2010. Reference No.-L-17012/15/2009-IR(M) dated 10.05.2010.

Sh. Ramesh Chander S/o Sh. Inder Singh, Village Samain, Tehsil-Tohana, Fatehabad.

.....Workmen

Versus

1. The Regional Manager, LIC of India. Regional Office, Karnal.

.....Respondent

Appearances

For the Workman: Sh.K.B.Sharma Advocate.

For the Management: Sh.P.K.Longia Advocate.

Order Dated:-01.04.2015

The Central Govt. vide letter No.-L-17012/15/2009-IR(M) dated 10.05.2010 has referred the following dispute to this Tribunal for adjudication:-

"Whether the action of the management of Sr. Branch Manager, Life Insurance Corporation, Tohana Branch in terminating the services of Shri Ramesh Chander son of Shri Inder Singh, Peon w.e.f. 31.1.2009 is just fair and legal? To what relief the workman is entitled?"

2. The brief facts of the case according to the workmen are that he was appointed as Peon with the management by Senior Branch Manager, Tohana on 21.01.2006 and he worked continuously till 30.01.2009 when his services were terminated by the Manager without assigning any reason orally. His work and conduct was satisfactory. He also worked as Assistant in Record Room and drawing his salary as per D.C. Rates during the above mentioned period. He was not served with any notice, charge sheet. Junior to the applicant was retained in service and no seniority list was prepared by the management. He was also not offered any retrenchment compensation at the time of his termination, though he has completed more than 240 days of continuous service during the preceding calendar year. The workman prayed 'that the management may be directed to reinstate him with full back wages and continuity of service.

3. Management filed written statement. Preliminary objection has been taken that there is no relationship of employee and employer between the workman and the management. It is admitted by the management that workman was appointed as Peon for 85 days from 21.01.2006 to 15.04.2006 due to rush of work for a specific period and his services were automatically came to an end on 15.04.2006 after completion of 85 days and he was never given any extension after that. As the workman had not completed 240 days, therefore, he is not entitled to any relief. It is also pleaded that as per the terms and conditions of the appointment letter dated 21.01.2006 and undertaking furnished by the workman, he worked only for 85 days and no further extension of time was granted to him. It is further pleaded by the management that there is no post of Peon lying vacant at the Branch Office, Tohana. It is prayed by the management that as the workman never worked for 240 days, therefore he is not entitled to any relief.

4. Replication filed by the workman in which the workman denied the averments of the written statement and it is pleaded that the applicant has the proof that he worked for more than 240 days. He has also submitted in replication that he worked on franking machine upto 16.01.2009. The detail of such payment made to the workman has been given in para 1 of the replication. He also submitted in replication that he also worked in record room and he prepared the bag of new policies and in the two months, he disposed of 25,000/- files. He also pleaded that he encashed cheques No.497001 to 498000 which belongs to account No.2204 and he made the payment to Branch Manager Tohana.

5. In evidence, workman placed on file his affidavit alongwith certain documents in which he has given voucher Nos. for the period of 28.03.2006 to 15.01.2009 and payment detail on his working on Franking Machine.

6. Management also placed on record affidavit of Mr.R.K.Sonker, Assistant Secretary (OS) Zonal Office, Kanpur. The workman in evidence stated that he was

appointed as temporary Peon as his name was sponsored by the Employment Exchange. He admitted that he was engaged for 85 days. He also admitted that no extension was ever issued by the management to him. He also stated that there is no name mentioned in his affidavit who was retained after his removal from service. He also admitted that he has also not mentioned any name who were engaged after his removal. He also stated that he used to earn Rs.3,000-4,000/- per month. The witness of the management submitted in evidence that workman was appointed through appointment letter dated 21.01.2006 for 85 days and thereafter no extension letter was issued to him and after his termination, no one was appointed in his place. He also stated that he cannot say whether one Jagdish is working on the post of Peon.

7. During the pendency of the proceedings workman also filed an application for placing some documents on file and his application was allowed vide order dated 12.02.2015 and documents were taken on record.

8. I have heard the parties and gone through the evidence and record. The learned counsel for the workman during argument submitted that workman worked after 85 days by initial appointment and continued working up to 2009 and completed 240 days in each calendar year and the management terminated his services without following the provisions of the industrial Disputes Act. Therefore, the workman is entitled for reinstatement in service with full back wages and other benefits.

9. On the other hand learned counsel for the management submitted that he workman was appointed for a specific period on 21.01.2006 for 85 days and after 85 days, no extension letter was ever issued to him. The workman failed to show a single document which could reveal that he continued working after expiry of 85 days as alleged by him. It is further submitted by the learned counsel for the management that as the workman was appointed for 85 days for specific period and no extension was given to him and workman never completed 240 days in any calendar year as alleged by him. Therefore the workman is not entitled for any relief under the provisions of the Industrial Disputes Act as the provisions of the Industrial Disputes Act are not attracted in the case of the workman and management prayed for the rejection of the reference.

10. From the perusal of Ex.M1 which is appointment letter, issued by LIC, Tohana office dated 21.01.2006, it reveals that workman Ramesh Chander son of Inder Singh appointed as temporary Peon at Tohana Office of the management in the temporary vacancy which has arisen on account of the rush of work from 21.01.2006 to 15.04.2006 for 85 days. Vide Ex.M2 workman executed an undertaking that he would not claim absorption in LIC of India on account of having been appointed as temporary Peon vide appointment letter dated 21.01.2006 issued by Senior Divisional Manager, LIC of India, Division Office, Karnal.

From Ex.M4, it is clear that Branch Manager, LIC, Tohana vide letter dated 25.04.2006 informed District Employment Officer, Employment Office, Tohana that Ramesh Chander son of Inder Singh was appointed by their office from 21.01.2006 for 85 days and now his term expired on 15.04.2006. From the document it is clear that workman was engaged for 85 days for specific period and he was not given any extension thereafter.

11. In evidence before this tribunal workman admitted that he was engaged for 85 days and no extension letter was ever issued by the management to him. He further admitted that an intimation vide Ex.M4 was sent to the employment exchange regarding completion of 85 days as per the appointment letter. He further admitted that there is no name mentioned in his affidavit who were retained after his removal from service. He further admitted that he has also not mentioned any name who was engaged after his removal. The witness of the management stated in cross-examination that appointment letter issued to the workman was for 85 days and there is no permanent post of the Peon in the Branch. Workman has also placed on record documents scrutiny of which shows that these have no relevance to the case. These documents failed to point out that workman worked with the management up to 30.01.2009. The only document is the initial appointment letter in which admittedly no extension was given to the workman after 85 days of work. The learned counsel for the management also placed reliance on 2013 (4)SCT115 Bhavnagar Municipal Corporation Vs. Salimbhai Umarbhai Mansuri, a judgment of the Hon'ble Supreme Court in which it has been held that when the term of workman was for a fixed period, the same would not constitute retrenchment. In 1996(2) SCT600 State of Rajasthan Vs. Rameshwar Lal Gahlot,(SC) also the Hon'ble supreme Court held that if the appointment is for a fixed period, Section 25F does not apply as it is covered by clause (bb) of Section 2(o) of the I.D.Act. In 2008(2) SCT 318 Ajay Kumar Vs. Presiding Officer and another, the Hon'ble High Court of Punjab & Haryana held that Section 25F is not attracted even if the workman had completed 240 days if he was employed as a casual labour or daily wage or for a fixed period.

12. From the facts and circumstances of the case in hand it is held that workman failed to point out that he worked up to the period of 31.01.2009, therefore, it cannot be held that Ramesh Chander son of Inder Singh worked up to 31.01.2009. The workman is not entitled to any relief.

13. The reference is disposed off accordingly. Central Govt. be informed. Soft as well as hard copy of the award be sent to the Central Govt. for publication.

S. P. SINGH, Presiding Officer

Chandigarh
01.04.2015

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1441.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत पेट्रोलियम

कॉरपोरेशन लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1131/2005) को प्रकाशित करती जो केन्द्रीय सरकार को 03/07/2015 को प्राप्त हुआ था।

[सं. एल-30012/11/2001-आई आर (एम)]
नवीन कपूर, अवर सचिव

New Delhi, the 8th July, 2015

S.O. 1441.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (*Ref. No. 1131/2005*) of the *Central Government Industrial Tribunal/Labour Court-2, Chandigarh* now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Limited and their workman, which was received by the Central Government on 03/07/2015.

[No. L-30012/11/2001-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present Sri Kewal Krishan, Presiding Officer

Case I.D. No. 1131/2005

Registered on 23.9.2005

Sh. Satbir Singh, S/o Sh. Gopal Ram, resident of Village Madlauda Tehsil and district Panipat, Haryana.

.....Petitioner

Versus

The Manager, Bharat Petroleum Corporation Limited, Marketing Terminal, Tehsil and District Panipat, Village Dadlana.

Respondents

APPEARANCES

For the workman Sh. Anish Babbar, Adv.

For the Management Sh. S. Kaushal, Adv.

AWARD

Passed on 6.5.2015

Central Government *vide* Notification No. L-30012/11/2001-IR(M) Dated 17.6.2003, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Bharat Petroleum Corporation Ltd. in terminating the service of Sh. Satbir Singh is justified? If not, to what relief the workman is entitled?"

In response to the notice, the workman submitted statement of claim pleading that he was appointed as Sweeper by the respondent management on 1.11.1997. He continuously worked till 10.7.1999 when he was told not to come on duty. He was getting Rs. 1900/- per month at that time. He was not paid salary for the month of May to July, 1999 and when he asked for the salary, his services were terminated. That he was not served with any notice nor any retrenchment compensation was paid to him. It is also pleaded that the persons junior to him were retained in service and in the circumstances; the termination of his services is illegal.

Respondent management filed written reply controverting the averments and denied that there was any relationship of an employer and employee between the parties. That the workman was never engaged by the management at any point of time. It is further pleaded that respondent management is a statutory body and has its Rules and Regulations for employing a person and the workman was never appointed as Sweeper with the respondent management.

Parties were given opportunities to lead their evidence.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the stand taken by him in the statement of claim.

On the other hand the respondent management has examined Sh. S.P. Bangur, who filed his affidavit Exhibit R1 reiterating the case of the respondent management as find mentioned in the written reply.

I have heard Sh. Anish Babbar, counsel for the workman and Sh. S. Kaushal, counsel for the management.

It was argued by the learned counsel for the workman that workman has given an affidavit that he worked with the management from 1.11.1997 to 10.7.1999 and his services were illegally terminated and he be reinstated in service.

It may be added that in order to establish the relationship of employer and employee between the parties, the workman was required to lead cogent and convincing evidence on the file and his affidavit alone do not prove the said fact. There is nothing on the file that he ever received any salary from the management. No effort was made by him to requisition the record from the management to establish the said fact. Since it is not proved that he was getting any wages from the respondent management, it cannot be said that he was ever employed as Sweeper with the respondent management. Again no appointment letter was issued to him and in the absence of any document on

the file, it cannot be said that he was ever employed by the respondent management.

An argument was also raised by the learned counsel that the management has taken a stand about giving contract for engaging employees but the contractor has not been examined and therefore adverse inference be taken. Suffice it to say, it is not the case of the workman that he was engaged by the respondent Corporation through the contractor and as such the non-examination of the contractor is of no help to the workman who has otherwise failed to prove his relationship with the respondent management. When it is not proved that he was ever employed by the respondent management, it cannot be said that his services were terminated.

In result, it is held that the workman was not an employee of the respondent management who did not terminate his service and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1442.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए स्टील अथॉरिटी ऑफ इंडिया का मिश्र धातु इस्पात संयंत्र, दुर्गापुर के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:—

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियमन, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:—

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अधिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/16/2013-एसएस-I]

अजय मलिक, अवर सचिव

New Delhi, the 8th July, 2015

S.O. 1442.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of Alloy Steel Plant of SAIL, Durgapur from the operation of the said Act. The exemption shall be effective from the date of issue of notification for a period of one year.

2. The above exemption is subject to the following conditions namely:-

- (1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees;
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;
- (3) The contribution for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the Said ESI Act or other official of the Corporation authorized in this behalf it, shall, for the purpose of:—
 - (i) Verifying the particulars contained in any returned submitted under sub-section(1) of section 44 for the said period; or
 - (ii) Ascertaining Whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:

- (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act., or
- (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in-charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or
- (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
- (e) Exercise such other powers as may be prescribed.
- (6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/16/2013-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1443.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं० 1, धनबाद के पंचाट (संदर्भ संख्या 31/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/07/2015 को प्राप्त हुआ था।

[सं० एल-20012/273/2003-आई.आर. (सी-1)]

एम.के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2015

S.O. 1443—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the Award (Ref. No. 31/2004) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad* as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 08/07/2015.

[No. L-20012/273/2003-IR(C-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1)(d)(2A) of I.D. Act,
1947

Reference No. 31 of 2004

Employer in relation to the management of Govindpur
Area of M/s. BCCL

AND

Their workman

Present:

Sri R.K. Saran,
Presiding Officer

Appearances :

For the Employers : Sri D.K. Verma, Advocate
For the Workman : Sri K.N. Singh, Rep.
State:—Jharkhand Industry:—Coal
Dated 26/6/2015

AWARD

By order No. L-20012/273/2003 IR-(C-I), dated 26/03/2004 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Govindpur Area No. III of M/S BCCL in not recording the date of Birth of the workman Sri Raj Kumar Kalindi as 02.04.1968 on the basis of Matriculation Certificate is justified? If not, to what relief the concerned workman is entitled to?"

2. The case is received from the Ministry of Labour on 19.04.2004. After receipt of reference, both parties are noticed, the Sponsoring Union files their written statement on 14.09.2004. The management also files written statement-

cum-rejoinder on 29.03.2006. The workman himself examined as WW-1.

3. There is dispute regarding Date of Birth of the workman. The workman submitted that his age is 29 years as recorded by the management as on 29.08.1995 is wrong and as a matter of fact his age to be recorded as per the age mentioned in the matriculation certificate.

4. The management submitted that the workman never produced the original matriculation certificate for rectification of age. The management has neither adduced any evidence nor filed any document.

5. From the photocopy of the matriculation certificate it appears that he has passed matriculation in the year 1984. But the workman joined in the years 1995, at that time he did not file the matriculation certificate. Even in this case he is not filing the original of the same. He passed the matriculation 1984 why he did not file the same in 1995 at the time of joining, for which he appears in Medical test.

6. He has admitted in his evidence that he signed form-B register and went for medical test. He raised belated claim without original Matriculation certificate. Photocopy of certificate is doubtful as the Board Secretary Signature is lacking. Hence claim refused.

7. Considering the facts and circumstances of this case I hold that, the action of the management of Govindpur Area No.III of M/S BCCL in not recording the date of Birth of the workman Sri Raj Kumar Kalindi as 02.04.1968 is justified. Hence he is not entitled to get any relief.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1444.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1, धनबाद के पंचाट (संदर्भ संख्या 63/1993) को प्रकाशित करती है जो केन्द्रीय सरकार को 08/07/2015 को प्राप्त हुआ था।

[सं. एल-20012/142/1991-आई. आर. (सी.-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2015

S.O. 1444.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/1993) of the Cent. Govt. Indus.-Tribunal - cum-Labour Court, No. 1, Dhanbad as shown in the Annexure, in the Industrial dispute between

the management of M/s. BCCL and their workmen, received by the Central Government on 08/07/2015.

[No. L-20012/142/1991-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 DHANBAD

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act.
1947

Reference No. 63/1993

Employer in relation to the management of Bhatdee
Colliery of M/s. BCCL

AND

Their workmen

Present:

Sri R.K. Saran,
Presiding Officer,

Appearances:

For the Employers: Sri D. K. Verma, Advocate

For the workman: Sri D. Mukherjee, Advocate

State: Jharkhand

Industry:- Coal

Dated:- 3/6/2015

AWARD

By order No L-20012/143/1991/IR (C-I) dated 09/02/1993, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Bhatdee Colliery of M/s. BCCL in superannuating Shri D.L. Hazari Clerk from 13/06/90 is justified. If not to what relief is the workmen entitled to?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates. Ld. Counsel for the workman submits that workman is not interested to contest the case. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का०आ० 1445.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 18/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 08/07/2015 को प्राप्त हुआ था।

[सं० एल-20012/62/2010-आई. आर. (सी.-1)]

एम.के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2015

S.O. 1445.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. 18/2011) of the *Cent. Govt. Indus.-Tribunal - cum-Labour Court, No. 1, Dhanbad* as shown in the Annexure, in the Industrial dispute between the management of M/s. **BCCL** and their workmen, received by the Central Government on 08/07/2015.

[No. L-20012/62/2010-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act
1947

Reference: No. 18/2011

Employer in relation to the management of Kusunda Area
of M/S BCCL

And

Their workmen

Present:

Sri R.K. Saran,
Presiding Officer

Appearances:

For the Employers: Shri D.K. Verma, Advocate

For the workman: None

State: Jharkhand.

Industry-Coal

Dated-4/6/2015

AWARD

By order No. L-20012/62/2010/IR (C-1) dated 16/03/2011, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub—

section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal.

SCHEDULE

"Whether the action of the management of Gondudih Colliery of M/S BCCL in not accepting the GVRs and dismissing Sri Nehal Ahmad from the service of the company is fair and justified? To what relief the concerned workman is entitled to?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently on behalf of the workman. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1446--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टीस्को के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण/श्रम न्यायालय, नं० 1, धनबाद के पंचाट (संदर्भ संख्या 36/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/07/2015 को प्राप्त हुआ था।

[सं. एल-20012/107/2005-आई.आर. (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2015

S.O. 1446.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1 Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. TISCO and their workmen, received by the Central Government on 08/07/2015.

[No. L-20012/107/2005-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD.

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act 1947

Reference No. 36 of 2006

Employer in relation to the management of TISCO

and

Their workman

Present:

Sri R.K. Saran
Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate
For the Workman : Sri Balmiki Prasad, Advocate.

State: Jharkhand.

Industry:- Coal.

Dated 2/6/2015

AWARD

By order No.-L-20012/107/2005 IR-(C-I), dated. 23/01/2006 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act. 1947, referred the following disputes for adjudication of this Tribunal:

SCHEDULE

"Whether the action of Jharia Group of Collieries of Jamadoba of M/S TISCO is not providing employment to Md. Kalam dependent son of Late Shri Mahamuddin is justified? if so, to what relief is the said dependent of the workman entitled?"

2. The case is received from the Ministry of Labour on 13.02.2006. After receipt of reference, both parties are noticed, the workman files their written statement on 08.05.2006. The management also files written statement-cum rejoinder on 28.05.2007. Both parties adduce one witness each on their behalf. Document of the management marked as M-1 to M-5.

2. The Short point to be decided in this reference is the workman, who died during cancer while in job under TISCO management, whether to be treated as death due to accident in the factory or not.

3. The applicant submitted that due to occupational hazard the workman suffered and subsequently he died.

4. On the other hand management counsel submitted that, though the workman died during service, his death has no nexus with its occupation and as such the applicant is not entitled to get any benefit.

5. Since the workman died in service his dependant son is to be enrolled in the dependent list waiting for job under the management whose parents who were in service died. Therefore it is ordered to enroll the name of the applicant in the dependant list for getting job and give him job, when the vacancy occurs and his terms reached.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1447.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्पाईस जैट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/58 ऑफ 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/07/2015 को प्राप्त हुआ था।

[सं एल-11012/13/2012-आई आर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2015

S.O. 1447.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 2/58 of 2012 of the *Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure*, in the industrial dispute between the management of *M/s. Spice Jet Ltd.* and their workmen, received by the Central Government on 08/07/2015.

[No. L-11012/13/2012-IR(CM-1)]

M.K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT:**

K.B. KATAKE,

Presiding Officer

Reference Case CGIT-2/58 of 2012**Employers in Relation to the Management of**

M/S Spice Jet Limited

The Manager

Spice Jet Limited

319, Udyog Vihar

Phase-IV

Gurgaon

Haryana-122 016.

AND**Their Workmen**

Shri Chandan Punjabi

H.No. 13, Flat No. 4

Ambaji Bhawan

Laxmi Colony

Mahul Road, Chembur

Mumbai-400 074

APPEARANCES

For the Employer : Mr. Sanjay Sharma,
Representative

For the Union : Mr. D.N. Mandavia,
Advocate.

Mumbai, dated the 7th April, 2015.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-11012/13/2012-IR (CM-I), dated 04.12.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the demand of Shri Chandan Punjabi, Cabin Attendant, In-flight Department of M/s. Spice Jet Limited to reinstate him in services of M/s. Spice Jet Ltd. Mumbai with back wages and continuity of services in view of his resignation letter 3/11/2011, coupled with termination order dated 7/12/2011 of the management w.e.f. 7/12/2011 is legal and justified? To what relief is the workman concerned entitled?"

2. After receipt of the reference, both parties were served with notice. In response to the notice second party workman filed his Statement of claim at Ex-3. According to the second party workman he is employee of the first party. He was appointed on 15/10/2010 as Cabin Attendant in Flight Service Department. After training he started his regular duty. Subsequently he was transferred to Mumbai. He was confirmed in service w.e.f. 01/08/2010. He was performing his duty honestly continuously and was getting his salary till 12/10/2011. He received a warning letter dt. 04/11/2011 regarding refusal to operate the schedule duty on 1/11/2011. The workman had denied the allegations *vide* his reply dated 3/11/2011. The workman had sought leave from 23/11/2011 to 28/11/2011 for performance of certain rituals in respect of his marriage. However company did not communicate him whether his leave was granted or refused. In order to harass the workman the first party company deliberately kept the training for flying license from 25/11/2011 knowing well that workman had asked for leave from 23/11/2011 to 28/11/2011. The company then issued a letter dt. 3/12/2011 in respect of unauthorised absence from duty from 23/11/2011 to 28/11/2011. Workman also received mail calling for his explanation and he had given the explanation to the Manager. He also gave explanation to the notice regarding unauthorised absence *vide* his reply dated 5/12/2011.

3. Workman submits that he received letter of termination dt. 7/12/2011 in respect of false charges. In that respect, neither any charge-sheet was issued to him nor any inquiry was initiated about the charges. Earlier workman had given his resignation *vide* his letter dt. 3/11/2011 with

intention to resign w.e.f. 16/11/2011 but deliberately the company has not accepted his resignation for want of three months notice. He also gave another letter dt. 3/11/2011 for resignation w.e.f. 2/2/2012. However there was no communication from the side of the company in respect of acceptance of the resignation. Pay *i.e.* total gross salary of Rs. 46,295 for the month of Nov. 2011 was not paid to the workman.

4. Second party is not performing any executive or supervisory work. He is doing his work manually and he comes within the definition of 'workman'. He had also sent legal notice through his advocate but company did not give any response thereto. The workman claims that his services were terminated illegally. In spite of utmost efforts he could not get any employment. Therefore he prays that the company be directed to reinstate him with full back wages w.e.f. 7/12/2012 with continuity of service.

5. The first party resisted the Statement of claim *vide* its Written Statement at Ex-6. According to the management the allegations of the workman are false. According to them on 1.11.2011 workman refused to operate a flight duty under the pretext that he had not completed his mandatory rest period and he has withheld the operation of the management. On 3/11/2011 workman was called to discuss the reason of his refusal to operate the assigned flight duties. In the discussion he was made to understand that calculation of rest period by him was only presumptive and he had not calculated it properly. He had also made to understand that such a refusal to operate flight duty amount to in-subordination and amount to gross misconduct. He demanded new bag and management assured to give the same. On 4/11/2011 a warning letter was issued to the workman for willfull refusal to operate scheduled flight duty and he was instructed to refrain from such activities in future. On 4/11/2011 the workman resigned from the service of the company and chose to serve for three months notice period and his last working day was 2/2/2012. The management had accepted his resignation.

6. After submission of resignation during the notice period, workman started to create nuisance for the management, such as on 21/11/2011 he approached the Manager and sought for leave from 23/11/2011 to 28/11/2011 knowing well that his annual recurrent training was scheduled to be held from 25/11/2011 to 28/11/2011 which was required for renewal of his license and prerequisite to perform his duties as cabin crew. As his license was expiring Management issued a letter dt. 21/11/2011 instructing him to attend the annual recurrent training from 25/11/2011 to 28/11/2011. It was also stated in the letter that no leave will be granted during the notice period. He was also informed not to leave his present base without prior permission of the Base Manager, Mumbai. However the workman remained absent and left the HQ on account of marriage without submitting marriage invitation

card to the company which was prerequisite to grant leave on that count. Before that on 15/11/2011 workman was scheduled to travel from Delhi to Mumbai on flight No. SG 109 as Additional Crew Member (ACM) in order to perform duties assigned to him by the management. However after boarding the said flight, without any authorisation workman de-boarded the said flight and even failed to inform the cabin crew-in-charge about his de-boarding. It clearly indicates the intention of the workman to disrupt the business operation of the company. Management issued another warning letter dt. 25/11/2011 for his said behaviour. On 28/11/2011 management noticed that workman was absconding from his normal duties since 23/11/2011. It was unauthorised absence without any approval from management. Company issued a letter directing him to report the Office within 24 hours. On 5/12/2011 workman reported back to the Head Office and made written submission about his absconding contending that he was absent for puja and rituals of his marriage. In spite of demand he did not produce the marriage invitation card.

7. As workman did not attend the recurrent training, his license was expired and he could not perform his duties as a cabin crew. For unauthorised absence and refusal to attend flight duty also amount to insubordination. Refusal to attend training and for all above reasons management decided to terminate his services from 7/12/2011. The workman had already resigned from services. For all these reasons the reference is liable to be dismissed. They denied all the allegations made by the workman in his statement of claim and pray that the reference be dismissed with cost.

8. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the termination of services of workman Shri Chandan Punjabi, Cabin Attendant in flight Department was legal and justified?	Yes
2.	Whether the workman is entitled to be reinstated in service with full back-wages and continuity of service?	No
3.	What order?	As per final order

REASONS

In the case at hand at the outset it was pointed out on behalf of the workman that the termination is *prima facie* illegal as neither the workman was charge-sheeted nor nay departmental inquiry was initiated against him. Therefore termination of his service is illegal. In this respect the fact is not disputed that, the workman is permanent employee

of the first party company. Therefore though there are serious allegations of misconduct against the workman his services cannot be terminated without domestic inquiry for the charges of misconduct. In the case at hand fact is not disputed that neither any charge-sheet was served on the workman nor management has conducted any departmental inquiry against him. Therefore it needs no further discussion to arrive me at the conclusion that the order of termination issued by the management is not legal and proper. Both the parties herein have led their entire evidence. In this backdrop merely setting aside the order of termination would not serve the purpose. When the pleadings and entire evidence of both the parties are on record the Tribunal is duty bound and well empowered to examine the evidence on record as to whether the workman is guilty of the alleged charges of misconduct.

10. There are specific allegations of misconduct and both the parties have led their documentary and oral evidence. Thus instead of merely setting the order of termination, I think it proper to deal with the charges leveled against the workman. The management has leveled following charges against the workman: (1) in-subordination (i) by refusing to operate his flight duty on 1/11/2011 & (ii) leaving Head Quarter without prior permission and against the specific instructions to that effect. (2) Un-authorized absence. (3) De-boarding the flight without intimation to the Crew In-charge.

11. Now I would like to examine the evidence in respect of each of the above charges.

12. In respect of the first charge the fact is not disputed that on 01/11/2011 workman refused to operate his flight duty by saying that, he had not completed his mandatory rest period as required as per DGCA rules. Secondly he has also admitted in his cross at Ex-11 that though he was asked not to leave the Head Quarter without prior permission he had to leave the HQ to perform some marriage rituals. In this respect from these admitted facts it is clear that the workman did not obey the orders of his superior. The workman has tried to give his explanation that he refused to attend the flight duty on 1/11/2011 as he has not completed his mandatory rest period. Neither workman has given this specific rest period he wanted to avail nor has given the hours of flight duty he had completed on 31/10/2011. Whereas specific question was put to the workman in his cross examination at Ex-11 that on 31/10/2011 he worked for 4 hours and 16 minutes. He replied that he cannot say whether he worked for 4 hours and 16 minutes as flying hours. Subsequently he says that, I again say that as per record it was 5 flying hours and had required 10 hours mandatory rest. This version of workman thus does not stand to reasons that he has not completed the mandatory rest period.

13. In this respect it was also pointed out that workman has admitted in his cross at Ex-11 that he was not having

proper crew baggage and it was also one of the reasons in refusing to attend the flight duty on 1/11/2011. After examining overall circumstances it is revealed that the workman has put forth unacceptable reason that he refused to attend the duty on 01/11/2011 as he had not availed sufficient rest. The main reason appears that he was not given proper baggage. For such reason the workman who was a crew member of the flight was not supposed to refuse to attend the duty. Said refusal no doubt amount to insubordination. Secondly it is also the charge of the management that, the workman was asked not to leave head quarter during the period 25/11/2011 to 28/11/2011 when he was supposed to attend his training. However the workman has left the Head Quarter by giving the reason that he has to perform some marriage rituals. It appears that before that the workman has sent his letter of resignation on 3/11/2011 contending that he is resigning *w.e.f.* 16/11/2011 and 15/11/2011 would be his last working day. The workman has admitted the same in his cross at Ex-11. In this respect workman has also admitted in his cross that management told him to give three months notice or deposit three months pay in lieu of notice and he had agreed to give three months notice. It seems that thereafter the workman has started creating trouble. On 21/11/2011 he has sought for leave from 23/11/2011 to 28/11/2011 saying that he has to perform his marriage puja and rituals. He has admitted in his cross that management told him to produce marriage invitation card to grant leave on that ground. However according to him the marriage invitation cards were not ready therefore he could not produce the same.

14. In this respect I would like to point out that had his marriage was to be held between 23/11/2011 to 28/11/2011, it is ridiculous to say that marriage invitation cards were not ready seven days there prior as on 21/11/2011. The workman has admitted in his cross that he left the Head Quarter on 23/11/2011 as he had to perform marriage rituals. In this respect further I would like to point out that the reason of marriage also appears false for the simple reason that, nowhere the workman has given either the date of his marriage or the venue fixed for. It is also cleverly mentioned in the statement of claim that he applied for leave to perform some marriage rituals. He has not contended anywhere that he had sought for leave for his marriage. The vague pleading that he was in need of leave to perform some marriage rituals appears a lame excuse. It appears that he was not in need of leave for his marriage. The fact is not disputed that on that count workman had left the Head Quarter though he was directed not to leave the same. It amount to in-subordination. Accordingly I hold that the workman is guilty for in-subordination on both these counts.

15. The second charge is in respect of unauthorized absence. The fact is not disputed that, the workman was absent from 23/11/2011 till 28/11/2011 by saying that he had to go to perform some marriage rituals. Neither he

produced marriage invitation card, nor has given details of his marriage such as day, date, time, place of marriage. Furthermore the license of the workman was expired and he was supposed to undergo Annual Recurrent Training. He admitted in his cross at Ex-11 that without renewal of license they cannot attend their duty as cabin crew. In spite of that, the workman remained absent during the training period. It seems that the workman was doing all these things merely to harass the management. He has already declared his intention to resign from duty. Instead of depositing three months pay, it seems that he has adopted such method to tease and harass the management. The management has not granted him leave as he had not produced marriage invitation card. He has not even communicated the details of day, date, place and time etc. of his marriage. He has not even pleaded in his statement of claim that he had sought leave for his marriage. He has not given the details thereof such as to when and where his marriage was to be performed. The pleading that he applied for leave to perform some marriage rituals is vague and unacceptable. It supports the version of the first party that the workman remained absent unauthorisedly. Therefore I found that the workman is guilty for unauthorised absence.

16. The next charge against the workman is that on 15/11/2011 he de-boarded the flight when he was asked to attend the flight duty as Additional crew Member. He admitted in his cross at Ex-11 that, he did not travel as Additional Crew Member in Delhi-Mumbai SG 109 flight on 15/11/2011. Vaguely he has further contended that it was the fault on the part of the company as they did not allow him to travel as ACM. He admitted that for that one more warning letter was issued to him on 25/11/2011. He further admitted that he had refused to accept the warning letter and it was sent by post and he had sent it back. Thereafter the said letter was sent to him on his registered address.

Looking into the overall conduct of the workman, it appears that, he is not a trustworthy witness to rely upon. It appears that he was creating nuisance for the first party management at every stage. Furthermore he has not pointed out as to who did not allow him to travel as ACM. He has vaguely contended in his cross at Ex-11 that, it was fault on the part of the company as they did not allow him to travel as ACM. His reply is vague and unacceptable. On the other hand his behavior of de-boarding the flight without intimation, appears consistent to his earlier behavior of creating problem to the first part. In this backdrop I hold that the workman de-boarded the flight without informing the Crew In-charge. All the allegations levelled against the workman are proved by the management. Thus I hold the workman guilty for the aforesaid misconduct. In the circumstances now it is irrelevant as to whether the resignation was accepted or kept pending till expiry of the notice period.

17. On the point of punishment I would like to observe that the overall conduct of the workman who is crew member as discussed hereinabove is no doubt unbecoming of a crew member. In case he remains in service such type of crew member may create even more serious problems. Not only he had disobeyed the orders of his superior but also refused to accept the warning letters. He also remained absent unauthorisedly during crucial period of his annual recurrent training. He de-boarded the flight without informing the Crew In-charge. All these behaviour is not at all tolerable more so from a cabin crew. Therefore the punishment of termination of his services is quite just and proper and the same cannot be called shockingly disproportionate to the proved misconduct. Thus I hold that the charges of serious misconduct are proved against the workman. Therefore I hold that the order of termination of his services is just and proper and needs no interference. Hence I pass the following order:

ORDER

Reference stands rejected with no order as to cost.

Date: 07.04.2015

K. B. KATAKE, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का.आ. 1448.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 51/1993) को प्रकाशित करती है जो केन्द्रीय सरकार को 08/07/2015 को प्राप्त हुआ था।

[सं. एल-20012/361/1991-आई. आर. (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2015

S.O. 1448.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 51/1993 of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of the M/S. ECL and their workmen, received by the Central Government on 08/07/2015.

[No. L-20012/361/1991-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.1, DHANBAD****In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act, 1947****Reference: No. 51/1993****Employer in relation to the management of Hariajam
Colliery of M/S ECL****AND****THEIR WORKMEN****PRESENT****SHRI R. K. SARAN**

Presiding Officer

APPEARANCESFor the Employers : Shri D.K. Verma,
Advocate

For the workman : None

State : Jharkhand.

Industry : Coal

Dated: 1/6/2015

AWARD

By order No. L-20012/361/1991/IR (C-I) dated 06/01/1993, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Bihar Colliery Kamgar Union for regularization of S/Shri Ashok Kumar Biswakarma and 19 others by the management of Hariajam Colliery of M/S Eastern Coalfields Ltd., Nirsha Area is Justified? If yes, to what relief the concerned workmen are entitled?"

Note: list of workmen is not received along with order of reference.

2. After receipt of the reference, both parties and noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 जुलाई, 2015

का०आ० 1449.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईसीएल के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 54/1993)

को प्रकाशित करती है जो केन्द्रीय सरकार को 08/07/2015 को प्राप्त हुआ था।

[सं० एल-20012/403/1991-आई. आर. (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2015

S.O. 1449.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 54/1993) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial dispute between the management of the M/s. ECL and their workman, received by the Central Government on 08/07/2015.

[No. L-20012/403/1991-IR(C-I)]

M.K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD****In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act. 1947****Reference: No. 54/1993****Employer in relation to the management of Lakhimata
Colliery of M/S ECL****AND****THEIR WORKMEN****PRESENT****SRI R. K. SARAN**

Presiding Officer

APPEARANCES

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand.

Industry : Coal

Dated: 1/6/2015

AWARD

By order No. L-20012/403/1991/IR (C-1) dated 06/01/1993, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Bihar Colliery Kamgar Union for regularization of S/Shri Badal Mahato and 11 others as Black Smith is justified? If yes, what relief the concerned workmen are entitled?”

Note: List of workmen is not received along with order of reference.

2. After receipt of the reference, both parties are noticed. But appearing for certain dates non appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 9 जुलाई, 2015

का.आ. 1450.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स बीएससीसी-सी “जेवी” के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण मुजफ्फरपुर के पंचाट (संदर्भ सं. 02/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 09/07/2015 को प्राप्त हुआ था।

[सं.एल-42025/03/2015-आईआर(डीयू)]

पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 9th July, 2015

S.O. 1450.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 02/2013) of the Industrial Tribunal, Muzaffarpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the M/s. BSC-C&C "JV" and their workman, which was received by the Central Government on 09/07/2015.

[No. L-42025/03/2015-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

OFFICE OF THE INDUSTRIAL TRIBUNAL, MUZAFFARPUR

PRESENT

SHRI BRAJ KISHORE PRASAD GUPTA

Presiding Officer

Industrial Tribunal, Muzaffarpur, Bihar

Industrial Dispute Case No. 02/2013

Sandeep Kamar
S/o Lakhindra Thakur,
R/o Village Serukahi,
P.O. Kabilpur P.S.-Kanti.
Distt.-Muzaffarpur, Bihar

WROKMAN/APPLICANT

Versus

1. M/s BSC-C&C "JV" (A Joint venture between BSCPI Infrastructure Ltd. and C&C Construction Ltd.) Shikarpur House Dr. T.N. Banarjee Road, Chhajju Bagh, Patna-800001

Through

2. Ashok Kumar Singh, Chief General Manager. M/s. BSC-C&C "J.V."
3. Umesh Mehotra. Senior Project Manager, M/s. BSC- C&C "J.V." Office At & Post-Korlahiya, via Rampur Hari. P.S. Runnisaidpur, Distt. Sitamarhi, (Bihar) Pin- 843117
4. Sanjay Kumar Singh, Junior Project Manager. BSC-C&C "J.V." Office. At & Post-Korlahiya via Rampur Hari. P.S. Runnisaidpur. Distt. Sitamarhi (Bihar) Pin- 843117.

MANAGEMENT/OPP. PARTIES

Dated 26th of June, 2015

AWARD

1. This case has been filed under section 2 of Section 2 (A) of I.D. Act, 1947 by the workman petitioner for the relief of
 - (i) That his termination order dated 07.06.2012 by the O.P's management be held illegal, improper, perverse and void abinitio and the same be quashed.
 - (ii) That the management OP's be directed to reinstate the workman with full back wages, benefit of consequential benefit, had his service not been terminate
2. The short fact of this case, is the workman Sandeep Kumar was employed by the OP management in the year 2007 and posted him at village Garha. P.S. Ahiyapur, Distt. Muzaffarpur (Bihar) As the OP's are contractor and engaged in construction of four lane road at Muzaffarpur and nearby districts, by the Govt. of India.
3. After employment the work man started working under the OP's and the OP's were fully satisfied with the work performance of the petitioner and deputed him at the Office of District Land Acquisition Officer, Muzaffarpur, as technical assistant, by Office order dated 05.08.2009. After deputation in the Office of land Acquisition Officer Muzaffarpur, the workman discharged his duty with full devotion and ability and also worked for the land acquisition in the surrounding district of Sitamarhi, as per requirement of the work. It is further

- case of the workman that he continuously worked in the Office of Distt. Land Acquisition Officer, Muzaffarpur from 2009 to 07.06.12, but the management OP's started torturing him by illegal deduction of him payment and also delayed his monthly payment, for that he protested and objected. Lastly on 07.06.12 stopped the petitioner to work in the Office of the District Land Acquisition Officer, Muzaffarpur by issuing a letter to the Land Acquisition Officer, Muzaffarpur and terminated the workman from his service on 07.06.2012 suddenly without complying the mandatory provisions of I.D. Act, 1947 and rules framed there under and also against the cannon of natural Justice.
4. It is relevant to mention that no charges of misconduct ever made against him nor any domestic enquiry was ever conducted, nor he was held guilty of misconduct, nor one month notice or one month salary was given to the petitioner.
 5. That the workman after termination of his service, raised industrial dispute, before conciliation Officer of Govt. of India by letter dated 11.06.2012 but, the conciliation authorities did not taken any appropriate steps for reinstatement of his service nor noticed the OP's to take appropriate step for his employment and payment of his back wages. Hence finding no alternative he filed this case before this tribunal for adjudication of his dispute.
 6. That after service of notices all the three OP's appeared and filed their joint written statement alleging their in, that this case is not maintainable as the work man is not a worker under I.D. Act, 1947. The workman petitioner had filed a case before the Court of Presiding Officer, Labour Court, Muzaffarpur *vide* Case No. 03/2012, for payment of wages, which is still pending, but this fact has not been disclosed before this Tribunal. Hence this Tribunal has no jurisdiction to try this case. Apart from, that this court has been constituted by the State Govt. under I.D. Act, 1947 and the OP's are concessionaire of the Central Govt. and this case has been filed directly before this Tribunal. On this score also this case is not maintainable before this tribunal.
 7. Besides the aforesaid facts the present OP's are engaged in road construction under Contract of NHAI (National Highways Authority of India) under Ministry of transport and High ways, in which North Bihar Highway Ltd. (NBHL) is the concessionaire. The petitioner Sandeep Kumar was in need of a service. He approached with the OP's and under the approval of the OP's he joined the service of the management on 23.01.2007, as supervisor at Muzaffarpur-Sonbarsa (Sitamarhi) Section of NH-77, on the monthly salary of Rs.-4500/- (Four Thousand Five hundred) only, later on after increment etc. he was getting Rs.-7800/- (Seven Thousand Eight Hundred) per month.
 8. It is further case of the OP's is that on 05.08.2009 Sri Sandeep Kumar was deputed by the management in the Office of the District Land Acquisition Officer, Muzaffarpur *vide* Letter No. 31026/05/2004/PD/PIU/Muz./978 dated 05.08.2009, where he worked till 10.10.2011, but the management withdrawn the service of Sri Sandeep Kumar from the Office of D.L.A.O. Muzaffarpur *vide* letter No.31026/10/2011/PD/PIU/Muz./1432 dated 11.10.2011 and in place of Sri Sandeep Kumar one Binod Bhagat was deployed and he was directed to report from the Office of management, but he was remain absent till 14.10.2011.
 9. On 14.10.2011 Sri Sandeep Kumar petitioner was transferred to camp No. 3 at Sonbarsa (Sitamarhi) as per requirement of the work, but he did not joined at Camp No. 3 and remain absent on 29.12.2011 the present petitioner came in the Office of the management and orally refused to join at Camp No. 3 at Sonbarsa (Sitamarhi) left the office. Therefore he was traceless. Finding no alternative the management OP's advised him *vide* letter No. BSC-C&C/NH-77/AB-71 dated 30.12.2011 to join his duty immediately, but to no effect, then after waiting for a month the management send a letter with charge sheet *vide* letter No. BSC-C&C/NH77/CS/66 dated 01.02.2012 for his unauthorized absence from the duty, but the petitioner was become traceless. The above two letters were sending through D.T.D.C. Courier Service at the home address of the worker. But he never replied nor joins his duty. It is false to say that the worked in the Office of D.L.A. Office Muzaffarpur since the 2008 to 07.06.2012.
 10. As far allegation of illegal deduction of salary, delayed payment and non-payment are concern, it is false and wrong allegation of the worker without any proof. It is also false to say that the workman was ever terminated from the service by the management with effect from 07.06.2012, rather after withdrawal from the D.L.A.O.-Muzaffarpur he himself left the service without any permission and information. Therefore, no questions arise for termination and compensation. The management finding no alternative simply struck off the name of the workman and made alternative arrangement to complete the contract work of National importance.
 11. All the allegations leveled against the management OP's are totally false, concocted and misconceived. The petitioner workman is not entitled for any relief claimed. Hence the case should be dismissed.

12. Now from the pleadings of the parties the following issues may be cast for the adjudication of the case of the workman—
 - (i) Whether this Tribunal has jurisdiction and power to entertain and adjudicate the case filed against the contractor/authorities of the Central Govt. under the I.D. Act, 1947 specially when this tribunal was constituted by the state Govt.?
 - (ii) Whether the petitioner workman was terminated from his service by the management without complying the mandatory provisions of the I.D. Act, 1947, and its rules framed under and entitle for reinstatement with back wages?
 - (iii) Whether the petitioner workman himself left the service of the management without any information of the management after withdrawal from the D.L.A. Office Muzaffarpur?
 - (iv) Whether this case is maintainable in the pendency of payment of wages Case no. 03/2012, pending before the Labour Court, Muzaffarpur?
 - (v) To what relief or relieves the workman entitled to?
13. Before entering into the findings of the issues framed above I would like to mention the Exhibits and evidences adduced by the respective parties to quote them in the findings.
14. The learned counsel of the work adduced workman witness No. 1 Sandeep Kumar and also exhibited following documents in support of his case and claim—
 - (i) Ext. 'A' is the photo copy of the plaint of payment of wages Case No. 03/2012 pending before Presiding Officer, Labour Court, Muzaffarpur.
 - (ii) Ext. A/1 is the application of work man Sandeep Kumar, which was filed before Project Manager B.S.C.-C&C "J.V."
 - (iii) Ext. 'B' is the letter dated 05.08.2009 send by Sri A.K. Verma, Project Director N.H.A.I. of India, by which Sri Sandeep Kumar was deputed at District land Acquisition Officer Muzaffarpur.
 - (iv) Ext. B/1 is the letter dated 14.10.2009 sent by Sri A.K. Verma, Project Director, N.H.A.I. of India by which he deputed Sri Ram Babu 'Amin' in the Office of District land Acquisition Officer, Muzaffarpur.
 - (v) Ext. B/2 is the letter dated 02.09.2011 by which the 'Amin' technical assistants were deployed in the Office of District Land Acquisition Officer, Muzaffarpur by the Project Director.
- (vi) Ext. 'C' is the letter of the District Land Acquisition Officer, Muzaffarpur, by which this workman and others were deployed in the Office of District Registrar. Muzaffarpur to do some work of NH-57 and same is the position of Ext. C/1 and C/2.
15. The management also adduced three witnesses in support of his case. His first witness is Suresh Pd. Prajapati. He is the Deputy Manager of B.S.C. C&C "J.V.", Second witness is Nawal Kishore Prasad. He is Assistant Manager of R.O.B. Third witness is Pradeep Kumar Anwar. He is Senior Accountant of Personnel, in BSC-C&C 'JV'.
16. The management OP's also exhibited following documents in support of his case, out of whom, ext. No. 1 is letter dated 11.10.2011 sent by Rajesh Kumar, Deputy General Manager. N.H.A.I. to District Land Acquisition Officer, Muzaffarpur, by this letter the worker petitioner Sandeep Kumar was withdrawn from the Office of District Land Acquisition Officer and one Binod Bhjagat was deployed there.
 - (i) Ext. '2' is voucher of internal communication with Sri Sandeep Kumar with endorsement, by which Sri Sandeep refused to report at camp No. III on 29.12.2011.
 - (ii) Ext. I/A is the letter dt. 30.12.2011 by the authorities of BSC-C&C 'JV'. to Sri Sandeep Kumar Workman, by which he was directed to join his duty before 09.01.2012 failing which it is constructed that you are not willing to continue in your service with the company.
 - (iii) Ext.-1/B is the letter dated 1.2.2012 by which an explanation was sought from the worker Sandeep Kumar regarding his unauthorized 107 days absence from the work of the company.
 - (iv) Ext. '3' to 3/d (total five) are the Staff increment statement for the year 2007-2008 to 2011-2012 of Sri Sandeep Kumar, to show his salary and his gradual increment.
17. Now I would like to inter into the findings of the crucial issue of the case.

FINDINGS

18. Issue No. I So far the objection of the OP's management with regard to jurisdiction and the power of this tribunal is concern, I have to say that this objection was raised by the OP's before this tribunal as a preliminary objection, just after filing of his written statement and after hearing both the

parties this issue was adjudicated and decided by this tribunal by its order dated 20.12.2013, by which it is held that after amendment in the I.D. Act, 1947 and after incretion of section 10 (d) (iii) proviso, which came into force on 21.08.1984. This tribunal has power and jurisdiction to entertain this case even if the appropriate Govt. is the Central Govt.

19. The order of this tribunal was accepted by both the parties and none of the parties filed any appeal, revision or challenged in the writ jurisdiction before competent court. Hence this issue is set of rest.

Issue No. II & III

20. Both the issues are inter linked therefore; both the issues are taken together.
21. It is the case of the workman that he had been stopped to inter into the premises of the company and by stopping him he had been deprived to continue his work with the company. As against this the OP's came with a case that after withdrawal of the workman from the Office of the D.L.A. Office Muzaffarpur he did not turn up to work to the place of his new assignment. For that the OP's issued notices and directed him to resume his work to his new place of work, but the work man did not pay any heed and remain kept mum.
22. To find out the real truth I have gone through with the evidence oral and documentary available on the record. From perusal of the same, it appears that most of the facts are almost admitted. Such as he join the service of the OP's on 23.01.2007, he was deputed in the Office of District Land Acquisition officer, Muzaffarpur on 05.08.2009 and he had been withdrawn from the said Office on 11.10.2011 and transferred to Sonbarsa Camp, but he did not joined there. But the real controversy started in the version of the workman when he started claiming. That he was deputed by the OP's in the Office of the D.L.A. Office for the work of the OP's. Where he worked till 06.06.2012 without any hindrance. (Vide Para-5 of his affidavit by way of examination in Chief).
23. From perusal of Ext. 1 it appears that a letter on 11.10.2011 was sent by Sri Rajesh Kumar, Deputy General Manager of National Highway Authority of India, Muzaffarpur, by which Sri Sandeep Kumar, present petitioner working in the said Office as technical assistant on behalf of the OP's. was withdrawn from that Office and on his place one Binod Bhagat was deployed in place of Sri Sandeep Kumar. This fact also finds support from Ext. B-2, Letter dated-02.09.2011 by which Sri Rajesh Kumar, Project Director informed the District Land Acquisition Officer, Muzaffarpur regarding

deployment of Sri Sandeep Kumar at his Office as technical assistant along with others, this letter is prior to letter Ext. 1 by the same officer. The deployment of Sri Sandeep Kumar is not under controversy with the D.L.A. Office. In deposition Para No. 7 of Sri Sandeep Kumar, it appears and he accepted the fact that the OP's. send a letter to the Land Acquisition Office to stop the entry of Sri Sandeep Kumar in the office.

“भू-अर्जन कार्यालय को भी इस बात की सूचना भेजवा दिया गया कि मुझे ऑफिस में नहीं जाने दिया जाये”

24. This acceptance of Sandeep Kumar support the verdict of Ext. 1, because no other letter brought on record by him that he was stopped to inter into the Office of D.L.A. Officer on 07.06.2012, nor any documentary and oral evidence are available on record to prove the said statement of Sri Sandeep Kumar.
25. In this respect the OP's. adduced three witnesses and all are the officers of the OP's. The OPWI Suresh Kumar Prajapati, who is Deputy Manager (Personnel) clearly stated in his deposition that—
 "N.H.A.I. के पत्र संख्या-31026/10/2011/पीडी/पीआईयू/मुज/1432 दिनांक 04.10.2011 के द्वारा तत्काल प्रभाव से आवेदक संदीप कुमार को जिला भू-अर्जन कार्यालय, मुजफ्फरपुर से प्रतिनियुक्ति से वापस कर उनके स्थान पर विनोद भगत को प्रतिनियुक्त किया गया था"
 This statement of O.W.I has not been furnished in the cross examination by the learned counsel of the workman, rather he stood in the test of cross examination by saying—
 ऐसी बात है कि वर्ष 2011-12 में संदीप कुमार को D.L.A.O. मुजफ्फरपुर से वापस बुला लिया गया था तथा इसके लिये कार्यालय आदेश निर्गत हुआ था"
26. OPW-2 Nawal Kishore Prasad, who is an Assistant Manager of B.S.C.-C&C and was posted at "Garaha" upto September 2010, accepted that the worker Sri Sandeep Kumar was deployed to the Office of the D.L.A. Officer, but he is unable to say that at present who deployed in the D.L.A. Office because he has been transferred from Guraha to R.O.B. Muzaffarpur in September 2010. In the cross examination the learned counsel fail to establish from this witness that the worker Sri Sandeep was deployed in the Office of D.L.A. Officer upto 07.06.2012.
27. O.P.W-3 Pradeep Kumar Anwar in the senior accountant of BSC-C&C 'J.V.'. He also stated that Sri Sandeep Kumar was deployed in August, 2009 in the Office of the D.L.A. Officer, but on 11.10.2011

he was withdrawn from the D.L.A. Office Muzaffarpur and in his place one Binod Kumar was deputed (*vide* para-5).

In cross examination he has strengthen the case of the OP's by saying—

“विनोद भगत नाम के कर्मचारी को जिला भू-अर्जन पदाधिकारी, मुजफ्फरपुर में अक्टूबर-2011 में पदस्थापित किया गया था”

28. In this way this witness also supported the case of the OP's. Nothing has come in the cross-examination of this witness to disbelieve his statement.
29. No documentarty evidence had been brought on record by the worker to show that he had worked at D.L.A. Office till 07.06.2012.
30. From the above discussion it is clear, that the workman had worked in the Office of the D.L.A. Office for the N.H.A.I. since 05.08.2009 to 11.10.2011. Accordingly I have no hesitation to hold that the workman worked in the Office of D.L.A. Officer Muzaffarpur from 05.08.2009 to 11.10.2011 only. He has failed to prove that he worked till 07.06.2012.
31. Now the second question is that, the workman was dismissed or retrenched/terminated from the service of the OP's without any consent cause or he himself, leave the service of the OP's.
32. To answer this question I would like to refer Ext.-1/A, which is the letter dated 30.12.2011, by which he had been directed to resume his duty on or before 09.01.2012, otherwise it will be construed that he is not interested to continue in his service with the OP's. and his name will he struck off from the rolls of the company. This letter was sent to the permanent residential address of the workman through courier. This letter was never return to the addressee, which is presumed to be served.
33. Here it is relevant to mention that previously the workman was deployed in the Office of the D.L.A. Officer since 05.08.2009 to 11.10.2011. When he had been withdrawn from the D.L.A. Office on 11.10.2011 and transferred to N.H.A.I. project Sonbarsha. Then he himself refused to work at Sonbarasa. To prove that he had been forcibly stopped to enter into the premises of the company, not a chit of a paper is available on the record save and accept the oral evidence of the workman. It is obvious that if he was forcibly stopped to inter into the premises of the OP's then why not he sent any letter to the higher authority of the N.H.A.I. Muzaffarpur, why not agitated the matter, why not join his duty after receiving of letter dated 30.12.11 (Ext.1/A), but became silent and keep mum.
34. Apart from that an another letter on 01.02.2012 by way of charge sheet was send to him with an allegation that you are absent without permission from your duty for a period of 107 days, which has cause dislocation of work and loss of company and called for an explanation from the worker, but in-spite of that letter this work man neither submitted his explanation nor resume his duty, nor agitated the matter before any higher authority. It is very strange that the OP's. are claiming that they never terminated the workman rather he himself gives up the service of the OP's without any information in protest of withdrawal from the Office of the D.L.A. Officer. No termination letter brought on record by any of the parties. Without termination letter now it has been presumed that the workman was terminated or retrenched from the service by the OP's. In his examination in chief and cross-examination he denied about issuance of letter. He did not brought any letter, document, evidence oral and documentary about forcibly stopping of his entrance in the premises.
35. On the other hand the OP's brought evidence oral and documentary that after transfer from D.L.A. Office to Sonbarsa, he left to work and did not assume his duty at Sonbarsa, this fact was supported by all the three witnesses of the OP's and nothing have come in their cross examination to disbelieve it.
36. It is also the case of the workman that on 07.06.2012 he had made protested to the general manager of the OP. Company about his late payment and illegal deduction from his salary, but not a chit of paper or any type of evidence have been brought on record to show how he made protest, by writing a petition, by orally making demand and from where which led to his termination. These fact and circumstances clearly shows that he was never terminated or retrenched by the OP's rather he himself leave the service of the OP's in protest of his transfer from the D.L.A. office, Muzaffarpur to Sonbarsa.
37. Hence I am of the opinion that the story of termination or retrenchment or stopping of entrance in the premises of the OP's are not correct and proved by the workman without any shadow of doubt. Accordingly I hold that the workman was never terminated/retrenched by the OP's. Accordingly this issue is decided against the workman. Hence no question arises for compliance of the mandatory provisions of the I.D. Act. 1947 under section 25(F)

Issue No.-IV

38. So far the question of maintainability of this case in the pendency of the case No. 03 of 2012 pending

before the court of presiding Officer Muzaffarpur is concern, from perusal of the main petition of this case (Plaint) it appears that in the present case the relief sought from the Tribunal is for the setting aside of the termination dated 07.06.2012, whereas the relief sought before the Labour Court is for payment of delayed wages and payment of the amount of illegally deducted salary of the petitioner worker.

39. It would be relevant to mention here that the legislatures separated the power and jurisdiction of the Tribunal as well as the Labour court in the I.D. Act, 1947 and its amendments, specifically the second Schedule governs the power and jurisdiction of the Labour Court and Third Schedule governs the power and jurisdiction of the Industrial Tribunal.
40. The matter of back wages and deducted wages comes under the jurisdiction of Second Schedule which is exclusively Triable by the Labour Court, and the termination and retrenchment matters comes under the third schedule which comes under power and jurisdiction of the Industrial Tribunal.
41. The present case was filed before this tribunal for setting aside of termination/retrenchment order of the OP's only, and the Case No. 03/2012 was filed before Labour Court for payment of deducted salary and back wages. Therefore, I am of the opinion that the present case filed before this tribunal is fully maintainable during the pendency of the case No. 03/2012 filed before Labour Court, Muzaffarpur.
42. Apart from the above discussion and provision of law, I have already discussed in the foregoing paragraphs that the present workman petitioner was never terminated nor retrenched by the OP's rather he himself left, the service of the OP's in protest of his transfer from the Office of the D.L.A. Officer Muzaffarpur, on this score also this tribunal have full jurisdiction to try this case as it is not within the jurisdiction of the Labour court. Hence this issue is decided against the OP's and in favour of the workman petitioner.

Issue No.-V

43. During course of argument the learned counsel of the OP's very much gave stress on the cross examination of the workman, in which he categorically admitted that before going in the service of the OP's in the year 2007, he was an practicing Advocate of the Civil Court, Muzaffarpur having Enrollment No. 48 of 2006 and a registered Advocate of Bar Association Muzaffarpur. He also admitted that this fact had not been disclosed by him before the OP's at the time of appointment, nor after getting service he informed the Bar Council of Bihar and Bar Association of Civil Court, Muzaffarpur, which is itself a cheating and

misappropriation of his post and unbecoming of a lawyer and against, the Advocates Act. Hence the very appointment of the petitioner worker was illegal.

44. In this respect he relied upon the judgement and orders passed by Hon'ble Supreme Court in Pankaj Gupta & other *Versus* state of Jammu and Kashmir case, passed on 16.09.2004. In which the Hon'ble Court opined that—

"The appointees have no right for regularization in service because of erroneous procedures adopted by the concern authorities".

In another case the Hon'ble Supreme Court in case of Branch Manager, M.P. Agro *Versus* Shri S.C. Pandey. It has been opined by the Hon'ble Court-

"If appointment has been made contrary to the provisions of the statute, the same would be void and the effect thereof would be that no legal right was derived by the employees".

In the similar case (U.O. India *Versus* M. Bhojkaram) it was hold that the order of removal would amount to recalling of fraudulently obtained erroneous appointment orders. This opinion of the Hon'ble Supreme Court was followed by the several Hon'ble High Courts in the catena of judgment.

So far violation of natural justice is concern. In the case, syndicate Bank *V/s.* General Secretary, syndicate Bank Staff Association & others, the Hon'ble S.C. held.

"Where in certain Bank employee was unauthorisedly absents himself from work for a period exceeding the prescribed limit of '90' days, he was by a notice required by the Bank to join duty within 30 days or else he would be deemed to have retired. In these facts, their lordships held that no enquiry was necessary and there was no violation of principle of natural justice."

45. Applying the above principle in the present case it would appear that the petitioner workman was also given notice through courier service to join his duty immediately after the receipt of this letter, but not later than 09.01.2012. If you fail to join your duties by the date stipulated above it will be construed that you are not interested to continue in your service with us and your name will be struck off from the rolls of the company.
46. In this way the OP's give him opportunity after unauthorized absence of 107 days to join his duty, but the petitioner workman fail to join his duty and he was forbidden by the official of the company to

join his duty by not to allowing him to inter into the premises, then why not he send any letter to the officials of the company about his joining of the duty. He may lodge any Sanaha or may take legal action against the employees of the OP's company. Not a chit of paper or oral evidences are available on the case record to prove this statement of the workman petitioner.

47. The rulings, filed by the learned counsel of the petitioner is of no help as they are not consistent with the ruling with the present case.

48. Hence, from the above discussion, it is clear that the case and claim of the workman petitioner has no leg to stand, rather he want to move and rotate the OP's on his own terms and wishes. Therefore, this case is dismissed but without cost.

BRAJ KISHORE PRASAD GUPTA, Presiding officer

नई दिल्ली, 13 जुलाई, 2015

का०आ० 1451.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधन के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय नं० II चण्डीगढ़ के पंचाट (2/2010) प्रकाशित करती है, जो केन्द्रीय सरकार को 13.07.2015 को प्राप्त हुआ था।

[सं० एल.12012/12/2010—आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1451.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 2/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure in the industrial Dispute between the management of Punjab National Bank and their workman, received by the Central Government on 13.07.2015.

[No. L-12012/12/2010-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT

SRI KEWALKRISHAN

Presiding Officer

Case No. I.D. No. 2/2010

Registered on 3.5. 2010

Devi Chand S/o Sh. Mansa Ram, aged 34 years, presently retrenched Clerk from Punjab National Bank Rekeong Peo, R/o Village Sanghoi, PO: Mangu, Teh: Arki, Distt: Solan

Petitioner

Versus

Dy. General Manager/Circle Head, (Disciplinary Authority), Punjab National Bank, Circle Office, Shimla.

Respondents

APPEARANCES

For the workman : Sh. Arun Batra, Adv.

For the Management : Sh. N.K. Zakhmi,
Advocate

AWARD

Passed on 23.6.2015

Central Government *vide* Notification No. L-12012/12/2010 IR(B-II) dated 19.4.2010, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Punjab National Bank to terminate the services of Sh. Devi Chand, workman is justified and legal? What relief, back wages, seniority and other benefits the workman Sh. Devi Chand is entitled to and from which date?"

In response to the notice, the workman appeared and submitted statement of claim to which written statement was filed.

The facts emerging are that workman was appointed as Peon on 27.7.1998 and was promoted as Clerk and he joined as such on 12.6.2007 at Rekeong Peo (HP).

Now, according to the workman, he had proceeded on leave on 13.6.2007 as his wife was to undergo an operation and in the meantime he also suffered from health problem and remained bed-ridden. He submitted leave applications on medical grounds. He did not recover from his health problems when he received the letter dated 30.6.2008 that his name was deleted from the roll of the bank deeming him to have voluntarily vacated the services. That the said order is illegal and arbitrary as no intimation was given to him before passing the said order and he was under *bona fide* belief that he was availing the extension of leave applied by him.

On the other hand, the case of the bank is that the workman proceeded on joining time from 13.6.2007 to 19.6.2007 and therefore remained absent. Registered letters dated 28.6.2007 (M1), 16.7.2007 (M2), 24.8.2007 (M3), 20.10.2007 (M4) and 11.12.2007 (M5) were issued to him but he did not join the duty. A final notice dated 11.3.2008

(M6) was issued to him asking him to join the duty but he did not report for duty and consequently in view of Clause 33 of the Bipartite Settlement dated 2.6.2005, he was deemed to have voluntarily vacated the employment *vide* order dated 30.6.2008 (M7) and since the workman himself remained willfully absent from duty, his name was rightly struck off from the roll of the bank and the order dated 30.6.2008 is legal and valid.

In replication the workman pleaded that there was no evidence or proof that workman has taken any employment and no opportunity was given to him before passing the final order and as such, the same is illegal.

Parties were given the opportunities to lead their evidence.

In support of its case, the workman appeared in the witness box and filed his affidavit reiterating the stand taken by him in the statement of claim. He has also placed on record medical certificate Exhibit WW2. He has also examined Sh. Om Prakash who filed his affidavit deposing therein that Devi Chand (workman) was granted leave on 13.6.2007 for attending his wife and in the meantime, he suffered health problems and he submitted application for extension of his leave.

On the other hand, the management has examined Sh. Subhash Chander Chaudhary, who filed his affidavit reiterating the stand of the management taken in the written statement and placed on record the copies of the notices sent to the workman.

The admitted facts are that on promotion the workman joined at Rekeong Peo Branch on 12.6.2007 and thereafter proceeded on leave from 13.6.2007 to 19.6.2007. He was required to join the duty on 20.6.2007 but he remained absent and did not report for duty. The bank has placed on record the photocopy of the notices dated 28.6.2007 (M1), 16.7.2007 (M2), 24.8.2007 (M3), 20.10.2007 (M4) and 11.12.2007 (M5) whereby, the workman was asked to report for duty. When he did not do so, a final order notice dated 11.3.2008 (M6) was issued to him intimating him to take action as per Bipartite Settlement.

Clause 30 of the Bipartite Settlement reads as follows:—

- (i) When an employee absent himself from work for a period of 90 or more consecutive days without prior sanction from the Competent Authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up employment in India or outside, the management at any time thereafter may give a notice to the employee at his last known address as recorded with the bank calling upon him to report for work within 30 days of the date of notice.

Unless the employee reports for work within 30 days of the notice or gives an explanation for his absence within the period of 30 days satisfying the

management *inter alia* that he has not taken up another employment or avocation, the employee shall be given a further notice to report for work within 30 days of the notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

In the event of the employee submitting a satisfactory reply, he shall be permitted to report for work thereafter within 30 days from the date of expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules/conditions of service. If the employee fails to report for work within this 30 days period, then he shall be given a final notice to report for work within 30 days of this notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

- (ii) If an employee again absents himself for the second time within a period of 30 days without submitting any application and obtaining sanction thereof, after reporting for duty in response to the first notice given after 90 days of absence or within the 30 days period granted to him for reporting to work on his submitting a satisfactory reply to the first notice, a further notice shall be given after 30 days of such absence giving him 30 days time to report. If he fails to report for work or reports for work in response to the notice but absents himself a third time from work within a period of 30 days without prior sanction, his name shall be struck off from the rolls of the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment.
- (iii) Any notice under this clause shall be in a language understood by the employee concerned. The notice shall be sent to him by registered post with acknowledgment due. Where the notice under this clause is sent to the employee by registered post acknowledgment due at the last recorded address communicated in writing by the employee and acknowledged by the bank, the same shall be deemed as good and proper service."

Thus, as per this settlement, when an employee absents himself from work for a period of 90 days or more without prior sanction from the competent authority, the management is to give a notice to the employee calling upon him to report for work within 30 days and the workman will be deemed to have voluntarily vacated his employment on the expiry of the said notice period. The workman continuously remained absent from 20.6.2007 and did not report for duty despite the issuance of several notices and even the final notice dated 11.3.2008 (M6) and the authorities were well within its rights to pass the impugned order dated 30.6.2008 (M7) deeming the workman to have voluntarily vacated his employment.

The contention of the learned counsel that workman did not take any job and no inquiry was conducted in this respect, is of no help to the workman as it is another eventuality when the workman be deemed to have voluntarily vacated his employment on getting another employment but remaining absent from duty and not joining the same despite issuance of notice itself is a ground to pass the impugned order. Workman has taken the plea that his wife fell sick and thereafter he also suffered health problems and even examined one Om Prakash in support of his assertions but these assertions seem to be an afterthought as he never approached the bank authorities for getting the leave sanctioned and there is no cogent evidence on the file except the bare statements that he or his wife remained sick. It was argued that management has failed to prove that the alleged notices were actually served on the workman. Notices were sent to the workman on his given address and there are postal receipts dated 11.7.2007 (M8), 13.8.2007 (M9) and 27.8.2007 (M10) showing that registered notices were sent to the workman and the workman did not deny the receipt of the notice and simply stated that he did not know whether the notices were sent to him or not and in the ordinary course it is to be presumed that when registered letters were sent, the same have been received by the workman. Workman himself admits during the cross-examination that he did not join his duty after availing joining time and remained absent and he did not submit any leave application or medical certificate to the authorities. Thus, the workman himself admits that he remained absent and did not apply for leave and in the circumstances; it cannot be argued that registered letter were not received by the workman.

Since the workman remained absent continuously after 20.6.2007 and despite issuance of several notices, he did not join the duty, the competent authority was well within its rights to pass the impugned order dated 30.6.2008 (M7) deeming that the workman has voluntarily vacated his employment and as such the order is illegal and valid.

In result, the reference is answered holding that the action of the management is justified and legal and the workman is not entitled to any relief. Let hard and soft copy of the award be sent to the Central Government for information and further necessary action.

KEWAL KRISHAN, Presiding Officer
नई दिल्ली, 13 जुलाई, 2015

का०आ० 1452.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय बंगलोर के पंचाट (15/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.07.2015 को प्राप्त हुआ था।

[सं एल-12012/13/2010-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1452.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as show in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 13/07/2015.

[No.L-12012/13/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 26th April, 2013

PRESENT

SHRIS.N.NAVALGUND

Presiding Officer

C.R. No. 15/2010

I Party	II Party
Sh. R. Rajkumar,	The General Manager (HR),
S/o S.R. Krishna,	Canara Bank,
No. 7/1, 2nd Cross, Tindlu	Head Office
Main Road, Near Police	J.C. Road,
Station, Vidyananyapura	BANGALORE.
Post,	
BANGALORE-560097.	

APPEARANCES

I Party	: Sh. M. Rama Rao
	Authorized Representative
II Party	: Sh. T.R.K. Prasad
	Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute *vide* Order No. L-12012/13/2010-IR (B-II) dated 16.04.2010 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the Management of Canara Bank, Circle Office, Bangalore, Karnataka in compulsorily retiring the services of Shri R. Rajkumar, Ex-sub-staff, Currency Chest, Canara Bank, RMV Extn., Bangalore, Karnataka *w.e.f.* 21.07.2005 is justified and legal? What relief the workman is entitled to?"

2. On receipt of the reference while registering it in C R 15/10 when notices were issued to both the sides, the

I Party entered his appearance through Sh. M. Rama Rao, General Secretary, Dharwad District Bank Employees Association and II party through T.R.K. Prasad, Advocate. After completion of the pleadings having regard to the certain allegations made in the claim statement touching the fairness of Domestic Enquiry while framing a Preliminary Issue as to:

"Whether the Domestic Enquiry held against the I Party by the II Party is fair and proper?"

After receiving the evidence adduced by both sides and hearing the arguments by order dated 25.10.2011 the Domestic Enquiry conducted against the I Party by the II Party held being Fair and Proper, the I party examined himself on victimization and unemployment and thereafter both sides filed their Written Arguments.

3. The brief facts leading to this reference may be stated as under:

4. R. Rajkumar (hereinafter referred as I party workman) who joined as probationer in the II party on 30.06.1993 while working as Sub-staff at the currency Chest, RMV extension of the II Party, on 14.12.2004 served with an Order of suspension alleging that he has committed certain acts of misconduct and then served with Charge sheet dated 05.02.2005 as under:

"You are working as Sub-staff at our Currency Chest, RMV Extension, Bangalore, since November, 1999 and you were placed under suspension on 15.12.2004 (AOH).

Our Currency Chest, RMV Extension, Bangalore, *vide* their letter No. 8/HO/51/04 dated 10.12.2004, reported to our Staff Section (workmen), Circle Office, Bangalore, alleging theft of 6 pieces of Rs. 10/- denomination notes on 10.12.2004. A detailed investigation conducted into the matter has revealed that, on 10.12.2004, you were entrusted with the job of bundling of Rs. 10/- denomination packets. As about 11.20 a.m., when Shri Muniyappa (17745), Officer, was not in his seat, you had removed 6 pieces of Rs. 10/- denomination notes from the notes given to you for bundling.

Shri K. Chandrakanth Pai (10547), Officer, caught you red handed while removing the 6 pieces from the sealed packet and reported the matter to the Manager, Shri K. Chandrakanth Pai, Officer, in his written statement dated 10.12.2004, has confirmed the above. You had confessed your above acts to Shri Vernekar, Manager and assured him that your will not repeat such mistakes in future.

In your written statement dated 10.12.2004 given to the Investigating Officer, you have confirmed that you were neither entrusted with the duties of sorting/counting of cash nor replacement of new notes with old notes of Rs. 10/- denomination bundles. You have also stated that the packet from which you had removed 6 pieces was sealed and signed by the branch officials.

Sorting of old notes, counting and making of new packets are being done in the sorting hall of Currency Chest. Nobody in the Currency Chest had entrusted you with the job of sorting of notes in the already sealed/signed packets of currency notes inside the vault. You have deliberately removed 6 notes of Rs. 10/- denomination for your personal gains.

Your above action in removing the currency notes from the packet given for bundling touches upon your honesty and integrity.

Our Staff Section (Workmen), Circle Office, Bangalore, had called for an explanation from you *vide* their letter DLSW/11177/EP/E. 37/2004 dated 20.12.2004. The reply submitted by you, *vide* your letter dated 17.10.2005 is neither convincing nor satisfactory.

By your above action you have failed to discharge your duties with utmost integrity, honesty, devotion and diligence and committed a 'Gross Misconduct' within the meaning of Chapter XI Regulation 2(A) (i) of Canara Bank Service Code.

By your above action you have also caused willful damage to the property of the Bank and its customers and committed a 'Gross Misconduct' within the meaning of Chapter XI Regulation 3(j) of Canara Bank Service Code.

Your actions being prejudicial to the interest of the Bank, you have committed 'Gross Misconduct' within the meaning of Chapter XI Regulation 3, Clause (m) of Canara Bank Service Code."

5. Being not satisfied with his reply the II party management appointing M.S. Bhat as Enquiry Officer and R.R. Iyengar as Presenting Officer ordered to hold the Domestic Enquiry. The Enquiry Officer after observing the formalities of the preliminary hearing while recording the evidence of K. Chandrakanth Pai, Officer at RMV extension, Currency Chest who allegedly caught hold the I party while he was removing six notes of Rs. 10/- denomination when he was entrusted with the work of bundling of sealed packets; T.K. Muniyappa, Officer working in Currency chest, RMV Extension who allegedly went for Coffee asking Sh. K. Chandrakanth Pai to keep watch on the currency chest; H.R. Mushtaq Ahmed, Officer working at SS(W), CO, Bangalore who claims to have gone for investigation immediately on report of the alleged act of I party to the Currency Chest, RMV Extension and P.R. Vernekar, Senior Manager, Currency Chest, RMV Extension. Extension to whom allegedly K. Chandrakanth Pai took R. Rajkumar immediately on holding him re-handed while taking out six notes of Rs. 10/- denomination given to him for bundling as MWs 1 to 4 and exhibiting the statements given by K. Chandrakanth Pai, T.K. Muiyappa to the Investing Officer Mr. Mushtaq Ahmed; Investigation report submitted by Mushtaq Ahmed dated 11.12.2004; the confession allegedly given by Rajkumar/CSE to Investigating Officer dated 10.12.2004; Report sent by P.R. Vernekar, Senior Manager to Canara Bank, Canara Bank Staff Section Workmen, Circle

Office, Bangalore; Letter No. BLC:SSW:11177:EP:E-37:2004 dated 20.12.2004 of SS(W), CO, Bangalore addressed to the CSE and reply of I party dated 17.01.2005 as MEx-1 to MEx-7 respectively, after receiving the written briefs from the Presenting Officer and the Defence Representative submitted his enquiry finding dated 13.05.2005 the charge levelled against CSE being Proved then the Disciplinary Authority while enclosing the copy of the enquiry finding called upon the CSE to make his representation and on receipt of his representation dated 13.06.2005 finding no substance in the representation agreeing with the Enquiry Finding he issued Second Show Cause Notice proposing compulsory retirement and after affording an opportunity of hearing passed the impugned order dated 11.07.2005 imposing Compulsory Retirement as envisaged in Chapter XI, Regulation 4, Clause (b) of Canara Bank Service Code. On appeal by the CSE the Appellate Authority while affording an opportunity of hearing agreeing with the enquiry finding as well as the punishment imposed by the Disciplinary Authority rejected the Appeal by his Order dated 02.08.2005. Then on failure of conciliation before the ALC(C), Bangalore, the government made their reference for adjudication.

6. The defence of the I Party throughout is that he was also asked to sort out the soiled notes from the bundles and accordingly he had taken out six soiled notes from a Packet and at that juncture he was taken to the Senior Manager by K. Chandrakantha Pai who was grudging ill will against him and after keeping those notes in the packet and keeping it in the chest some two officials from Circle Office came and under threat of filing a complaint taken from him in writing as per Ex M-4 and that he did not attempt to commit theft of six notes of Rs. 10/- denomination as alleged against him.

7. On appreciation of the charge levelled against the CSE with the evidence brought on record by the management in the Domestic Enquiry in the light of the defence put forward by the I Party, I am of the considered view the enquiry finding in the absence of production of allegedly tampered packet and the notes allegedly taken out by the I Party with an intention to take it away is perverse and the I Party is entitled for reinstatement with 50% of backwages, continuity of service and all other consequential benefits that he would have received in the absence of the impugned punishment of compulsory retirement imposed against him for the following reasons:

REASONS

8. According to K. Chandrakantha Pai (MW 1) and his statement given to the Investigating Officer marked as MEx-1 in the Domestic Enquiry on 10.12.2004 around 11.30 am he noticed CSE removing some notes from Ten Rupees packet kept in valve from the sealed packets lying on the table of Muniyappa (MW 2) who had just left for Urination, he caught hold of him dragged him to the Senior Managers table along with the six pieces of Ten Rupee denomination he had taken out from the Packet with a request to take action against him. According to T.K. Muniyappa, Officer

of Currency Chest, MW 2 on 10.12.2004 at 11.30 am with permission of Senior Manager, Mr. P.R. Vernekar, he went to coffee/toilet in the bank premises and during his absence it was told that Mr. Rajkumar, Sub-staff was being caught red handed by K. Chandrakantha Pai while removing six notes of ten rupees denomination from a packet and having reported the same to the Senior Manager. It has come in the evidence of MW 3, Investigating Officer, Mushtaq Ahmed that by the time he visited the Currency Chest the alleged tampered packet was rectified and placed in the Chest and could not be identified later. The relevant question of the Defence Representative and his Answer reads as under:

"Whether you have gone through the tampered packet of Rs. 10/- before preparing the MEX Ans. By the time I visited the Currency Chest, the tampered packet was rectified and placed in the chest and could not be identified later."

Thereby it is clear that even the Investigating Officer, MW 3 could not see the alleged tampered sealed packet and taking out of six notes from the said packet. The only material that he relied upon was the statement of K. Chandrakantha Pai marked as MEx-1 and the alleged confession statement given by the CSE/I Party workman. When the I Party claims that his statement was taken under threat and coercion being a lowest cadre employee in the Bank his claim that it was taken under threat and coercion has to be appreciated from the other circumstances. If at all the work entrusted to the I Party workman on 10.12.2004 was just bundling of the sealed packets and he had no reason to open the packet the Senior Manager to whom immediately report was made by K. Chandrakantha Pai he ought to have preserved all the packets entrusted to the I party workman for the purpose of bundling till the Investigation Officer arrived to the spot who could have preserved the required evidence to accept the charge levelled against the I Party. When the entire case made out against the I party workman is that he had removed six notes of Ten rupee denomination from one of the sealed packets entrusted to him for the purpose of bundling, in other words he had stolen six notes from a sealed packet out of the packets entrusted to him only for the purpose of bundling, no enquiry could have been proceeded without the said item being produced. When the charge is one of theft, fraud or dishonesty with respect to the employers property the failure to produce the property vitiates the enquiry and it is highly difficult to accept such charge of theft by the employee. Under the circumstances, the finding of the Enquiry Officer charge being proved only on the oral version of K. Chandrakantha Pai/MW 1 and Senior Manager/MW 4 without production of the material object of theft is perverse and unsustainable.

9. In view of my above finding the enquiry report is perverse, the punishment imposed by the Disciplinary Authority based on such report as well as the order of the Appellate Authority confirming the same are not sustainable and the I Party workman is entitled for

reinstatement. The I Party workman while examining himself has deposed that he is not gainfully employed after the impugned punishment of compulsory retirement and except a bald suggestion that as it is not possible to lead the life without doing any job he is stating falsely that he is without any job nothing has been elicited either in his cross-examination or any rebuttal evidence is placed to demonstrate that he has been gainfully employed. However having regard to the nature of the job of the I Party workman and no evidence is placed how he pulled on the maintenance of himself and his family members for all these days, it can be presumed that he must have made some earnings to maintain himself and his dependent family members. As such, under the circumstances it is just and proper to direct the II Party to pay him 50% of backwages from the date of impugned punishment of compulsory retirement. In the result, I pass the following Order:

ORDER

The reference is allowed holding that the action of the management of Canara Bank, Circle Office, Bangalore, Karnataka in compulsorily retiring the services of Shri R. Rajkumar, Ex-sub-staff, Currency Chest, Canara Bank RMV Extn., Bangalore, Karnataka *w.e.f.* 21.07.2005 is not legal and justified and that he is entitle for 50% of backwages, continuity of service and all other benefits that he would have received in the absence of the impugned punishment of compulsory retirement. The II party may adjust the Terminal Benefits paid if any to the I Party from the arrears of wages payable to him.

S.N. NAVALGUND, Presiding Officer.

नई दिल्ली, 13 जुलाई, 2015

कांआ 1453.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय मुंबई के पंचाट (06/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.07.2015 को प्राप्त हुआ था।

[सं एल-12011/81/2013-आईआर(बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1453.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 06/2014 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1 Mumbai as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 13.07.2015.

[No. L-12011/81/2013-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT

JUSTICE S.P. MEHROTRA

Presiding Officer

Reference No. CGIT-1/6 of 2014

PARTIES:

Employers in relation to the management of Bank of Maharashtra

AND

THEIR WORKMAN

APPEARANCES:

For the first party/ : Mr. M.B.
Management Anchan, Adv.
For the second : None present.
party/Union
State : Maharashtra,
Mumbai, Dated the 2nd day of July, 2015.

AWARD

1. The present Reference has been made by the Central Government by its order dated 7.2.2014 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of Reference as per the Schedule to the said order are as under:

"Whether the action of the management of Bank of Maharashtra, Yamunanagar Branch by not filling the vacancy of computer operator 'B' since April, 2008 and depriving the eligible person for getting functional allowance is justified? What relief the Workman is entitled to?"

2. By the Order dated 24.2.2014, this Tribunal directed that Notices be issued to the parties, and the matter be put up on 11.4.2014.

3. Pursuant to the Order dated 24.2.2014, the case was put up before the Tribunal on 11.4.2014.

4. On 11.4.2014, it was noted in the Order passed on the said date that Notices issued to the first party/ Management as well as the second party/Union had been served, and the Acknowledgement Cards had been received back. Mr. M.B. Anchan, Advocate was present before the Tribunal on the said date *i.e.* 11.4.2014, and he stated that he would be putting in appearance for the first party/ Management on the next date fixed in the matter. However, despite service of Notice, non was present on behalf of the second party/Union on the said date *i.e.* 11.4.2014.

5. In the circumstances, by the Order dated 11.4.2014, the case was fixed for 16.6.2014 for filling Statement of Claim by the second party/Union.

6. Pursuant to the Order dated 11.4.2014, the case was put up on 16.6.2014. Mention was made on behalf of Mr. M.B. Anchan, Advocate for adjournment of the case on the said date. However, none was present for the second party/Union on the said date also *i.e.* 16.6.2014.

7. In the circumstances, by the Order dated 16.6.2014, the case was fixed for 11.8.2014 for filing Statement of Claim by the second party/Union.

8. Pursuant to the Order dated 16.6.2014, the case was put up on 11.8.2014. Mr. M.B. Anchan, Advocate was present on behalf of the first party/Management. However, none was present for the second party/Union.

9. In the circumstances, by the Order dated 11.8.2014, the case was adjourned to 30.9.2014 for filing Statement of Claim by the second party/Union.

10. Pursuant to the Order dated 11.8.2014, the case was put up on 30.9.2014. On the said date, Mr. M.B. Anchan, Advocate was present on behalf of the first party/Management. However, none was present for the second party/Union.

11. In the circumstances, by the Order dated 30.9.2014, the case was adjourned to 18.11.2014 for filing Statement of Claim by the second party/Union.

12. Pursuant to the Order dated 30.9.2014, the case was put upon 18.11.2014. Mr. MB. Anchan, Advocate was present on behalf of the first party/Management. However, none was present for the second party/Union.

13. In the circumstances, by the Order dated 18.11.2014, the case was adjourned to 22.12.2014 for filing Statement of Claim by the second party/Union.

14. Pursuant to the Order dated 18.11.2014, the case was put up on 22.12.2014. On the said date, Mr. M.B. Anchan, Advocate was present on behalf of the first party/Management. However, none was present for the second party/Union.

15. In the circumstances, by the Order dated 22.12.2014, the case was adjourned to 20.1.2015 for filing Statement of Claim by the second party/Union.

16. Pursuant to the Order dated 22.12.2014, the case was put up on 20.1.2015. Mr. M.B. Anchan, Advocate was present on behalf of the first party/Management. However, none was present for the second party/Union.

17. In the circumstances, by the Order dated 20.1.2015, the case was adjourned to 23.2.2015 for filing Statement of Claim by the second party/Union.

18. Pursuant to the Order dated 20.1.2015, the case was put up on 23.2.2015. Mr. M.B. Anchan, Advocate was present on behalf of the first party/Management. However, none was present for the second party/Union.

19. In the circumstances, by the Order dated 23.2.2015, the case was adjourned to 17.3.2015 for filing Statement of Claim by the second party/Union.

20. Pursuant to the Order dated 23.2.2015 the case was put up on 17.3.2015. On the said date, Mr. M.B. Anchan, Advocate was present on behalf of the first party/Management. However, none was present for the second party/Union.

21. In the circumstances, by the Order dated 17.3.2015, the case was adjourned to 24.4.2015 for filing Statement of Claim by the second party/Union.

22. As 14.4.2015, was declared as a holiday on account of "Birthday of Dr. B.R. Ambedkar", the Tribunal by the Order dated 15.4.2015 fixed the matter for 8.6.2015.

23. Pursuant to the Order dated 15.4.2015, the case was put up on 8.6.2015. On 8.6.2015, Mr. M.B. Anchan, Advocate was present on behalf of the first party/Management. However, none was present for the second party/Union.

24. In the circumstances, by the Order dated 8.6.2015, the case was adjourned to 2.7.2015 for filing Statement of Claim by the second party/Union.

25. Pursuant to the Order dated 8.6.2015, the case is put up today.

26. Mr. M.B. Anchan Advocate is present for the first party/Management. He states that despite repeated communications having been sent by him to the first party/Management, he has not so far received any Authority for putting in appearance on behalf of the first party/Management.

27. None is present for the second party/Union today also.

No Statement of Claim has been filed on behalf of the second party/Union.

28. From the above narration of facts, it is evident that despite service of notice, none has put in appearance on behalf of the second party/Union even though the case has been repeatedly adjourned on account of absence on behalf of the second party/Union. No Statement of Claim has so far been filed on behalf of the second party/Union.

29. In view of the above, it is evident that there is no pleading or evidence filed on behalf of the second party/Union in support of its Claim as contained in the aforesaid Reference.

30. In the circumstances, no relief can be granted to the second party/Union.

31. The Reference made to this Tribunal is, therefore, answered by stating that no relief can be granted to the second party/Union.

32. Award is passed accordingly.

JUSTICE S.P. MEHROTRA, Presiding Officer.

नई दिल्ली, 13 जुलाई, 2015

का०आ० 1454.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड बैंक

ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (13/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.07.2015 को प्राप्त हुआ था।

[सं. एल-12011/270/2000-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1454.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. 13/2001**) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, **Kolkata** as shown in the Annexure, in the industrial dispute between the management of **United Bank of India** and their workmen, received by the Central Government on 13.07.2015.

[No. L-12011/270/2000-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 13 of 2001

**PARTIES : Employers in relation to the management of
United Bank of India**

AND

THEIR WORKMEN

PRESENT Justice Dipak Saha Ray

Presiding Officer

APPEARANCE

On behalf of the : None.
Management

On behalf of the : None.
Workmen

State : West Bengal

Industry : Banking.

Dated: 25th June, 2015.

AWARD

By Order No. L-12011/270/2000-IR(B-II) dated 22.03.2001 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication.

"Whether the action of the United Bank of India in not regularizing the service of its canteen employees (as per list enclosed) in the service of the Bank and refusing them the grade and scale and all other benefits available to the members of subordinate staff

of the bank is legal and justified? If not, what relief are the concerned workmen entitled"

2. When the case is taken up today for hearing, none appears on behalf of the management in spite of service of notice. None also appears on behalf of the union. It appears from the record that on 11.03.2014 the Ld. Counsel for the union appeared for the last time. Thereafter six consecutive dates have been given to the parties to appear before this Tribunal but none of the parties has tuned up even today.

3. In the instant case the union raised the industrial dispute and accordingly as a consequence the reference case has been initiated. But from the records and the conduct of the union it may be presumed that the union at present is not interested to proceed with the case. So, it appears that no fruitful purpose will be served in keeping the matter pending.

4. In view of the above facts and circumstances, the present reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding
Officer.

Dated, Kolkata,

The 25th June, 2015.

नई दिल्ली, 13 जुलाई, 2015

का०आ० 1455—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (02/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.07.2015 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1455.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. 02/2011**) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, **Nagpur** as shown in the Annexure, in the industrial dispute between the management of **Bank of Maharashtra** and their workmen, received by the Central Government on 13/07/2015.

[No. L-39025/01/2010-IR(B-II)]

RAVI KUMAR, Desk Officer.

ANNEXURE**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,****CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/Application 02/2011****Date: 08.01.2015.**

APPLICANT : Shri Akbal Samiulla Khan,
Aged about 50 years.
R/o Plot No. 20, P and T Colony,
Amravati Road.
V/s

RESPONDENT : Chief Manager,
Bank of Maharashtra,
Nagpur Region,
Regional Office,
Mahabank Building,
Sitabuldi, Nagpur.

AWARD**(Dated: 8th January, 2015)**

This is an application filed by the workman, Shri Akbal Samiulla Khan, ("the applicant" in short) under sub-sections 1 and 2 of section 2-A of the Industrial Disputes Act, 1947 ("the Act" in short), for setting aside the order dated 23.02.2011, passed by the Disciplinary Authority awarding the punishment of compulsory retirement from service against him and for other consequential reliefs.

It is to be mentioned here that the applicant had made application before the Assistant Labour Commissioner (Central), Nagpur on 20.07.2011 and raised the industrial dispute for conciliation and the respondent submitted its written reply on 18.08.2011, but as no settlement could arrived at between the applicant and the respondent, even though a period of more than 45 days elapsed from the date of raising the dispute, the applicant has filed the present application directly before this Tribunal, in pursuance to the provisions of Sub-sections 1 and 2 of section 2-A of the Act.

2. The respondent was noticed to file the written statement, in response to which, the respondent, "Bank of Maharashtra", ("the Bank" in short) filed the written statement.

3. The case of the applicant as presented in his application is that he was an employee of the Bank and the Bank is a nationalized bank and an "industry" within the meaning of section 2(j) of the Act and the service conditions of employees of the Bank are governed by the provisions of Sastry Award, Desai Award and different bipartite settlements arrived at industry level, between the trade unions and association of the Bank and he was appointed as a clerk by the Bank on 13.02.1984 and his services were terminated by awarding the punishment of compulsory retirement from 23.02.2011, as a consequence of the

disciplinary action initiated against him by the Bank and he made application and raised the industrial dispute before the Assistant Labour Commissioner (Central), Nagpur on 20.07.2011 for conciliation, under section 2 A of the Act and the Bank submitted its written reply before the conciliation officer on 18.08.2011 and thereafter, he submitted his rejoinder on 23.08.2011 and as no settlement could be arrived, within a period of more than 45 days, after filing of the dispute before the conciliation officer, he has approached the Tribunal by filing the application for adjudication of the industrial dispute.

The further case of the applicant is that initially, he was appointed in the service of the Bank as a clerk on 13.02.1984 and was posted at Kannad branch and subsequently, he was transferred to various branches of the Bank and when the order impugned came to be given to him, he was working at Jaripatka, Nagpur branch and before the said assignment, he was working at Mahal Branch, Nagpur and a charge sheet dated 26.07.2010 containing as many as two charges, covered under clauses 19.05 (d) and 19.5(j) of the Bipartite settlement was served on him and the allegations against him were that he availed a term loan of Rs. 25,000/- from Mahal Branch of the Bank against his life Insurance policy bearing No. 970220890 on 03.09.2002 and he applied for issuance of duplicate insurance policy no. 970220890 on the ground of the original policy to have been lost and on receipt of the duplicate policy, he applied for premature payment of the said policy and received an amount of Rs. 39294/- from the LIC on 20.01.2010 and he did not take any permission from the Bank, before obtaining the payment of the policy from LIC and he was put under suspension *w.e.f.* 11.05.2010 and the charges framed against him were vague and for one incident, two separate charges were framed and it was not clear as to whether there was charge of willful damage to the property of the Bank or customer or doing an act prejudicial to the interest of the Bank and gross negligence and the vagueness of the charges goes to the root of the charge sheet and in this ground only, the enquiry is liable to be declared as invalid, unfair and vitiated.

It is also pleaded by the applicant that even though, both the charges levelled against him were based on only one incident, separate and distinct punishment came to be awarded for the same and as the allegation was only one, therefore, the same ought not to have been unduly expanded by the Disciplinary Authority for the purpose of conducting the departmental enquiry and awarding punishment and the exercise adopted by the bank squarely invalidates and vitiates the entire enquiry and the two heads of misconducts were not only antithetical, but were also mutually exclusive and the Enquiry Officer also accepted the same evidence as indicative of two heads of charges, which were mutually exclusive and from the said facts, it is clear that there was non application of mind on the part of the Enquiry Officer and on this ground also, the entire

exercise of conducting the departmental enquiry is unfair, vague and vitiated.

The further case of the applicant is that it can be seen from the record of the Bank that there was total negligence on the part of the bank in as much as, despite obtaining instructions, they preferred not to deduct any amount from his salary for years together and the same indirectly added to inadvertence and confusion on his part that his life policy must have been lost and though his salary was endorsed in the name of the Bank, no charge was framed by the Bank with LIC, for the reasons not known to him and since his services came to be transferred to Jaripatka Branch, he lost sight about any outstanding dues in the loan at Mahal Branch and he could not repay the loan for want of any intimation or information from Mahal Branch and normally, documents of any loan if availed are subject to renewal within three years of their execution and no such effort came to have been taken by the Bank at any point of time and if documents would have referred to him by the bank, it would have come to his mind that loan was outstanding against him and the policy, which he presume to have been lost is safe at Mahal branch and all those facts contributed to a presumption and confusion in his mind that there was no loan against him and under such presumption, he applied for the duplicate policy from LIC and when it came to his notice about the outstanding loan, he immediately repaid the entire loan amount and due to the same, he was put to loss, as he was required to pay an amount of Rs. 59000/- against borrowing of Rs. 25000/- and the Bank was not put to any loss, but earned extra interest *i.e.* profit, even though, there was total negligence on the part of the Bank in not recovering the amount from his salary every month and even if, his LIC policy, which the bank was supposed to keep safe, was lost by it and not charged with the LIC, which had contributed to his confusion.

The further case of the applicant is that grant of loan against his LIC policy by the Bank and charging interest thereon is nothing but a transaction between a customer and the Bank and close scrutiny of the charges would indicate that matter highlighted there under affect only private rights and the employer-employee relationship does not come into picture and the loan was not sanctioned to him as an employee of the Bank, but as a customer of the Bank against his LIC policy and the transaction was outside the master-servant relationship and subject matter of taking disciplinary action and on this count, the charge sheet was unreasonable, unjust and without any power of the Disciplinary Authority in Law and therefore, the charge sheet is liable to be declared as invalid, illegal and unfair and the Bank was predetermined to punish him by hook or crook and the enquiry was merely a farce and all the orders passed by the Bank Authorities were indicative of total non application of mind and the order dated 07.04.2011 suggests the bias, vindictiveness and casual approach and non application of mind is writ large on the face of the

order and the enquiry proceedings therefore, are unjust and vitiated.

It is also averred by the applicant that the approach of the Enquiry Officer was mechanical and not impartial and he lost sight of the fact that onus of proving the charges was on the management and the charges were not proved beyond the shadow of doubt and the Enquiry Officer failed to notice the glaring discrepancies in the evidence recorded by him and gave his findings casually and mechanically to suit the management and the Enquiry Officer failed to consider and analyze the real evidence, while arriving at his findings and the findings of the Enquiry Officer are perverse and action based on such perverse findings is unjust and illegal and is liable to be set aside and the punishment is unreasonably high and does not commensurate with the gravity of the misconducts and by the punishment impugned, he has lost the opportunity of serving in the Bank for a further period of 10 years and after termination of his services, he is not in gainful employment.

The applicant has prayed to set aside the order of punishment dated 23.02.2011, passed against him and to direct the Bank for his reinstatement in service with continuity, full back wages and all consequential benefits.

4. The Bank in its written statement has pleaded *inter-alia* that the applicant was working as a clerk at its Jaripatka branch and he was issued with the suspension order dated 08.05.2010 followed by the charge sheet dated 26.07.2010, for willful damage and attempt to cause damage to the property of the Bank which was prejudicial to the interest of the Bank and gross negligence, likely to involve the Bank in serious loss, which amounted to misconducts under clause 5(d) and 5(j) of the memorandum of settlement dated 10.04.2002 and Shri V.P. Ghate was appointed as the Enquiry Officer and he conducted a full fledged departmental enquiry against the applicant for the misconduct and proper opportunity was granted to the applicant to defend himself in the enquiry and the applicant neither examined any witness nor produced any evidence in his defence and the Enquiry Officer declared the charges to have been proved beyond doubts against the applicant and submitted his report on 04.12.2010 and after considering the facts and circumstances of the case, the findings of the Enquiry Officer, the evidence led in the enquiry by both the parties and the argument advanced by them, the Disciplinary Authority on 23.02.2011 passed the order of "compulsory retirement from service with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment" and the order dated 23.02.2011 passed by the Disciplinary Authority is just and proper and the workman preferred an appeal against the order of punishment and his appeal was dismissed on 30.06.2011 by the Appellate Authority, holding the same to be without substance.

It is further pleaded by party No. 1 that the applicant applied for a term loan of Rs. 25000/- from its Mahal Branch against his LIC policy No. 070220890 having surrender value of Rs. 29000/- on 03.09.2002 and the applicant agreed to repay the same at the rate of Rs. 500/- per month *w.e.f.* October, 2002, through salary deduction, but he did not repay the loan as agreed and an amount of Rs. 59,292/- was outstanding in his loan amount as on 03.05.2010 and he failed to ensure timely repayment of the loan, as per the commitment given to the bank and the applicant applied for and obtained duplicate LIC policy on the false ground that the original policy was lost and also furnished the indemnity bond dated 18.02.2009 to LIC and on obtaining the duplicate policy, the applicant obtained the premature payment of the said LIC policy for Rs. 39,294/- fraudulently, which was deposited with it as security and without permission of the Bank *vide* cheque No. 355099 dated 08.01.2010 and on 20.01.2010, the applicant withdrew the said amount, instead of depositing the amount in his loan amount availed against the said policy and it had lost confidence in the applicant, who defrauded the Bank and committed gross misconduct and the misconduct committed by the applicant was twofold and accordingly, it levelled appropriate charges against the applicant and both the charges were co related to each other and the charges were plain and clear and do not suffer from any infirmity and the same cannot be termed as invalid and unfair and there was no negligence on its part and the workman is not entitled to any relief.

5. No rejoinder has been filed by the applicant.

6. As this is a case of compulsory retirement of the workman from services, as a punishment in the disciplinary proceedings initiated against him, the fairness and otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 21.10.2014, the departmental enquiry conducted against the applicant was held to be legal, proper and in accordance with the principles of natural justice.

7. At the time of argument, it was submitted by the learned advocate for the applicant that when the workman was working at Mahal Branch, Nagpur charge sheet dated 26.07.2010 was served on the workman under clauses 19.5(d) and 19.5(j) of the Bipartite settlement and a departmental enquiry was conducted against the workman and the final order of punishment of compulsory retirement dated 23.02.2011 was passed by the Disciplinary Authority against him and the charges levelled against the workman were vague and such vagueness goes to the root of the charge sheet and the order of punishment passed against the workman on such charges is not maintainable.

It was further submitted by the learned advocate for the applicant that from the materials on record, it can be found that there was total negligence on the part of the respondent Bank and despite obtaining instruction from

the applicant, the respondent preferred not to deduct any amount from his salary for years together and the same indirectly added to inadvertence and confusion on the part of the applicant that his insurance policy must have been lost by him and the respondent did not sustain any loss, as the applicant, as the applicant paid a total amount of Rs. 59,000/- with interest on the loan amount of Rs. 25,000/- taken by him and cleared the loan, soon after it came to his knowledge about the outstanding loan against him and the respondent earned extra profit in shape of extra interest and there was total negligence on the part of the respondent in not recovering the loan amount from the salary of the applicant and such facts clearly establish that the acts alleged to be the misconduct by the respondent were committed due to inadvertence contributed by both the sides and the transaction of granting of loan by the respondent to the applicant against his LIC policy demonstrated only the relationship of customer and Banker and the same does not amount employer and employee relationship and the approach of the respondent was mechanical and the findings of the Enquiry Officer are perverse and not impartial and he lost sight of the fact that the onus of proving the charges was that of the management and from the materials on record, it can be found that the charges were not proved beyond shadow of doubt and the Enquiry Officer did not notice the glaring discrepancies in the evidence recorded by him and gave his findings casually and mechanically and he did not consider the real evidence on record at all, while giving his findings and he did not analyze the evidence judiciously and the findings of the Enquiry Officer are without just and proper reasoning and the further action basing on such perverse findings is also unjust and illegal and the punishment imposed is unnecessarily harsh and does not commensurate with the gravity of the misconducts and therefore, it is a fit case, where interference of the Tribunal under section 11-A of the Act is necessary and the order of punishment imposed against the applicant is required to be quashed and set aside and the applicant is entitled for his reinstatement in service with continuity, full back wages and all other consequential benefits.

8. Per contra, it was submitted by the learned advocate for the respondent that in this case, it has already been held by the Tribunal that the departmental enquiry conducted against the applicant to be legal, proper and in accordance with the principles of natural justice and the applicant was supplied with the copy of the enquiry report, which was received by him on 18.12.2010 and he was asked to submit his comments on the findings of the Enquiry Officer, but he did not submit any comment and *vide* letter dated 31.01.2011, the applicant was served with the second show cause notice with intimation about the proposed punishment and he was also asked to appear on 09.02.2011 for personal hearing and on the request of the applicant, the same was adjourned to 21.02.2011 and personal hearing

was given to the applicant on 21.02.2011 and the Disciplinary Authority considered the materials on record of the enquiry and so also, the submissions made by the applicant and imposed the punishment of compulsory retirement from services with superannuation benefits as per order dated 23.02.2011 and the applicant preferred an appeal before the Appellate Authority against the order of punishment and after hearing the applicant and his defence representative, the Appellate Authority dismissed the appeal by order dated 30.06.2011 and the findings of the Enquiry Officer are not at all perverse and the punishment imposed against the applicant is justified and the same is not shockingly disproportionate and the applicant is not entitled to any relief.

In support of the submissions, the learned advocate for the respondent placed reliance on the decisions reported in 2014 III CLR-42 (Amrendra Kumar Singh Vs. Central Bank of India), 1999 I CLR-499 (Kuldip Singh Vs. Commissioner of Police), (2011) 6 SCC-3769 Commissioner of Police Vs. Jaibhagwan and (2010) 7 SCC-6789 East Coast Railway Vs. Mahadev Apparao).

9. In view of the submissions made by the learned advocates for the parties, I think it apropos to mention the principles settled by the Hon'ble court in a string of decisions including the decision cited by the learned advocate for the respondent regarding the jurisdiction and the power of the Tribunal in regard to interference with the findings and punishment in a departmental enquiry.

It is well settled by the Hon'ble Apex Court that:—

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislative or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is *made fide* is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

It is well settled by the Hon'ble Apex Court that:—

"A review of the above legal position would establish that the disciplinary authority and on appeal, the appellate, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action much remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegities or irregularities which vitiate the

process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision making process."

It is well settled by the Hon'ble Apex Court that:—

"A review of the above legal position would establish that the disciplinary authority and on appeal, the appellate, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

It is also settled beyond doubt that departmental enquiry is not bound by strict rules of Evidence Act, but by fair play and natural justice. Only total absence, but not sufficiency of evidence before Tribunal is ground for interference. If the enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the court and in a departmental enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probabilities."

10. The first contention raised by the learned advocate for the applicant is that the charges levelled against the applicant were vague and the vagueness goes to the root of the charge sheet submitted against the applicant and the punishment imposed against the applicant, basing on such defective charges cannot be sustained.

On perusal of the charge sheet, Ext. W-II, it is found that the charges levelled against the applicant were mentioned in detail and the lists of documents and the witnesses were enclosed with the same as annexure I and II. The clauses of the Bipartite Settlement were also clearly mentioned in the charge sheet. So, it cannot be said that the charges levelled against the applicant were vague. Hence, there is no force in the submissions made by the learned advocate for the applicant on that score.

11. The next contention raised by the learned advocate for the applicant is that the transaction of grant of loan to the applicant against his LIC policy was that of a customer and Banker and did not involve master-servant relationship

and therefore, the entire disciplinary action including the imposition of punishment is illegal and unjustified.

It is the admitted case that the applicant was granted a loan of Rs. 25,000/- against his LIC policy. It is also not disputed that it was agreed between the parties that the loan amount was to be recovered in installments from the salary of the applicant and the salary of the applicant was endorsed in the name of the bank. From such facts, it is clear that the loan was not advanced to the applicant as a customer, but the same was given to him as an employee of the Bank and there was employer-employee relationship between the Bank and the applicant in granting the loan. Hence, I find no force in the contentions raised by the learned advocate for the applicant in that regard.

12. The next contention raised by the learned advocate for the applicant was that the applicant was transferred from Mahal Branch to Jaripatka Branch and for that he lost sight about any outstanding dues against him and the inaction of the Bank in recovery of the loan amount from his salary and nonrenewal of the documents relating to the said loan contributed to the confusion and presumption in his mind that there was no loan against him and this his LIC policy was lost and as such, he applied for the duplicate LIC policy and when it came to the notice of the applicant about the outstanding loan amount, he immediately repaid the entire amount of Rs. 59,000/- and the Bank earned extra profit in shape of interest and there was no loss to the Bank and such facts were not at all taken into consideration by the Enquiry Officer, while giving his findings and the findings of the Enquiry Officer are not based on the evidence on record of the enquiry and therefore the findings are perverse.

It is necessary to mention here that it is well settled by the Hon'ble Apex Court that absence of any loss to the Bank is no defence for a Bank employee and a Bank employee has to exercise a higher degree of honesty and integrity.

Moreover, on perusal of the materials on record, it is found that the plea of the applicant that due to the inaction of the Bank to recover the loan amount from him, he thought that there was no outstanding loan against him and that his LIC policy was lost and for that he obtained the duplicate LIC policy is an afterthought. In the show cause filed by the applicant to the charge sheet, he did not mention the above facts. Rather, he had taken quite a different plea in his show cause. The applicant had mentioned that, "I am having so many LIC policies and on the LIC policy No. 970220890 (policy in question) was due for maturity on March, 2010 and he was not aware of which particular policy was assigned to Bank. Hence, I applied for discounted value of policy immediately."

It is to be mentioned here that the applicant did not adduce any evidence in his defence in the departmental

enquiry. Even, he did not give his own statement in the enquiry.

It is clear from the own pleading of the applicant and the other materials on record that as the respondent did not recover the loan amount advanced to him, in installments, from his salary, he applied for the duplicate of the LIC policy, without disclosing about his obtaining loan from the respondent Bank, against the said, policy and prematurely received the amount against the said policy.

13. On perusal of the proceedings of the departmental enquiry held against the applicant, it is found that the Enquiry Officer has dealt with the charges chronologically. The evidence in support of the charges has been properly assessed by the Enquiry Officer in reaching the conclusions by him. The pleas taken by the applicant were also duly taken into consideration by the Enquiry Officer. The Enquiry Officer has also assigned cogent reasons in support of his findings. The findings of the Enquiry Officer are based on the materials on record and the findings are not as such, which cannot be arrived at by any prudent man on the evidence on record. Hence, it is found that the findings of the Enquiry Officer are not perverse.

14. So far the proportionality of the punishment is concerned, it is found that grave misconduct under clauses 5(d) and 5(j) of the memorandum of Bi-partite settlement dated 10.04.2002 for willful damage and attempt to cause damage to the property of the Bank and doing an act prejudicial to the interest of the Bank respectively has been proved in a properly conducted departmental enquiry. So, the punishment imposed against the applicant cannot be said to be shockingly disproportionate, calling for any interference. Hence, there is no scope to interfere with the punishment. Hence it is ordered:

ORDER

The order dated 23.02.2011 passed by the management of the Bank awarding the punishment of compulsory retirement against the applicant is just and proper. The applicant is not entitled to any relief. The application is rejected, being devoid of any merit.

J.P. CHAND, Presiding Officer
नई दिल्ली, 13 जुलाई, 2015

का.आ. 1456.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 01/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.07.2015 को प्राप्त हुआ था।

[सं एल-39025/01/2010-आईआर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1456.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 01/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 13.07.2015.

[No. L-39025/01/2010-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/Application 01/2011

Date: 08.01.2015.

Applicant : Shri Subhash, S/o Vasantrao Nasre
Aged about 58 years.
Resident of C/o Union Bank of
India Housing Society,
Plot No. 844, Vikash Complex,
Vaishali Nagar, P.O. Kamal Chowk,
Nagpur.

V/s.

Respondent : Assistant General Manager,
Bank of Maharashtra,
Nagpur Region,
Regional Officer,
Mahabank Building,
Dr. Munje Chowk, Sitabuldi,
Nagpur.

AWARD

(Dated : 8th January, 2015)

This is an application filed by the workman, Shri Subhash Vasantrao Nasre, ('the applicant' in short) under sub-sections 1 and 2 of section 2-A of the Industrial Dispute Act, 1947 ('the Act' in short), for setting aside the order dated 29.03.2011, passed by the Disciplinary Authority awarding the punishment of dismissal from service against him and for other consequential reliefs.

It is to be mentioned here that the applicant had made application before the Assistant labour Commissioner (Central), Nagpur on 25.07.2011 and raised the industrial dispute for conciliation, but as no settlement could arrived at between the applicant and the respondent, even though a period of more than 45 days elapsed from the date of raising the dispute, the applicant has filed the present application directly before this Tribunal, in pursuance to the provisions of Sub-sections 1 and 2 of section 2-A of the Act.

2. The respondent was noticed to file the written statement, in response to which, the respondent, "Bank of Maharashtra", ("the Bank" in short) filed the written statement.

The case of the applicant as presented in his application is that he was an employee of the Bank and the Bank is a nationalized bank and an "industry" within the meaning of section 2(j) of the Act and the service conditions of employees of the Bank are governed by the provisions of Sastry Award, Desai Award and different bipartite settlements arrived at industry level, between the trade unions and association of the Bank and he was appointed as clerk by the bank on 04.03.1984 and he was dismissed from services from 29.03.2011, as a consequence of the disciplinary action initiated against him by the Bank and he made application and raised the industrial dispute before the Assistant Labour Commissioner (Central), Nagpur on 25.07.2011 for conciliation, under section 2A of the Act and as no settlement could be arrived, within a period of more than 45 days, after filing of the dispute before the conciliation officer he has approached the Tribunal by filing the application for adjudication of the industrial dispute.

The further case of the applicant is that he was an Ex-service man and he came to be appointed in the services of the Bank initially as a clerk on 04.03.1984 and was posted at Mulawa branch and subsequently, he was transferred to various branches of the Bank and when the order impugned came to be given to him, he was working at Kamptee branch and he was suspended from services *w.e.f.* 12.10.2009 and he was served with the charge sheet dated 18.02.2010 containing as many as two charges covered under clause 19.05 (d) and 19.5(j) of the Bipartite settlement and Shri V.N. Dongre was appointed as the Enquiry Officer to conduct the departmental inquiry against him and Shri Dongre conducted the departmental enquiry against him and gave his findings on 22.01.2011, declaring the charges to have been proved against him and on the basis of such findings, the Disciplinary Authority passed the final order of punishment dated 29.03.2011 and consequently, his services came to be dismissed and he filed an appeal before the Appellate Authority, challenging the order of punishment, but his appeal came to be dismissed by the Appellate Authority by order dated 11.07.2011.

It is further pleaded by the applicant that the bare perusal of the charge sheet would reveal that the charges framed against him were vague and for one incident, two separate charges were framed and it was not clear as to whether there was charge of willful damage to the property of the Bank or customer or doing an act prejudicial to the interest of the Bank and gross negligence and the vagueness of the charges goes to the root of the charge sheet and in this ground alone, the enquiry is liable to be declared as invalid, unfair and vitiated.

It is also pleaded by the applicant that the procedure followed by the Enquiry Officer in the enquiry was not proper and fair and the documents of the management were given exhibit numbers immediately by the Enquiry Officer even though, the said documents were neither admitted nor were proved during the enquiry and the above procedure demonstrates that the Enquiry Officer was pre-determined to establish the charges against him and what was done by him was only a formality and this proves the bias of the Enquiry Officer against him and the Enquiry Officer without applying the standards meant for re-examination as given in the Evidence Act, went ahead in giving liberty to the management to re-examine the witness to fill in the gaps in the evidence to suit the management and in fact, there was no need for re-examination of the witnesses and for that serious pre-judice was caused to him and on this short ground, the enquiry was unjust and invalid and the findings of the Enquiry Officer are perverse and the approach of the Enquiry Officer was mechanical and not impartial and the Enquiry Officer lost sight of the fact that the onus of proving the charges was on the management and the charges were not proved beyond the shadow of doubt and if the customers alleged in the charge sheet had deposited the amount with him as the cashier employee, then as to why the amount was not paid to them by the Bank and there was no authorization of the officer on the receipts of the complainants as required by the Bank's procedure and really it was under doubt as to whether the said persons had deposited the money with him and false and frivolous complaints were made against him at the instance of some interested persons and the counter pips produced during the course of the enquiry were not reliable and the signature purported to have been given and the stamp branded were not identified and the same were not certified by any competent hand writing expert and as he did not accept the said counter slips, it can be said that the evidence on that count was not beyond shadow of doubt and the witnesses subsequently stated that they had received the amount and they did not have any complaint about the deposits made by them in the Bank and the said facts show that the entire allegations were developed by the management on the basis of cock and bull story and the Enquiry Officer did not take any pain to notice the glaring discrepancies in the evidence recorded by him and gave his findings casually and mechanically just to suit the management and the Enquiry Officer also lost sight of the fact that on 10.07.2009, he was not at all working on the receipt counter, but was on payment counter of the branch and record shall demonstrate that it was Mr. Gaikward, who worked in the receipt counter on 10.07.2009 and it is likely that the complainants in fact had given the cash to someone other than himself (the applicant) or else did not deposit the cash and made a false and frivolous complaint and the Enquiry Officer did not consider the above stated facts at all, while arriving at its findings and no analysis of the evidence was made by the

Enquiry Officer judiciously and the findings of the Enquiry Officer were without just and proper reasoning and the findings of the Enquiry Officer are perverse and action based on such perverse findings is unjust and illegal and the punishment "punishment without notice" for every charge is disproportionate and unwarranted and if the trend of giving of punishment by the same Disciplinary Authority in many more serious cases is taken note of, then it would be seen that he has been singled out by the Disciplinary Authority for awarding the highest punishment of "Dismissal without notice", whereas, the other employees were awarded with punishment of "compulsory retirement" and his past service record was not considered while imposing the punishment by the Disciplinary Authority and the punishment is harsh and does not commensurate with the gravity of the misconducts.

The applicant has prayed to set aside the order of punishment dated 29.03.2011, passed against him and to direct the Bank for his reinstatement in service with continuity, full back wages and all consequential benefits.

4. The Bank in the written statement has pleaded *inter-alia* that the applicant while working at its Kamptee branch as a clerk was issued with the order of suspension dated 12.11.2009, followed by the charge sheet dated 18.02.2010 and a corrigendum dated 18.08.2010, for the misconduct committed by him and the charges levelled against the workman were under clauses 5(d) and 5(j) of the memorandum of settlement dated 10.04.2002, on the allegations of misappropriation of funds on various occasions, willful damage to the property of the Bank and its customers which was prejudicial to the interest of the bank and gross negligence likely to involve the bank in serious loss and Shri V.N. Dongre was appointed as the Enquiry Officer and a full fledged departmental enquiry was conducted by Shri Dongre and the enquiry officer submitted his report on 22.01.2011, finding the charges were proved beyond doubts against the applicant and taking into consideration the facts and circumstances of the case, evidence led by both the parties and the submissions made by them, the Disciplinary Authority passed the final order of punishment of "Dismissal without Notice" on 29.03.2011 and the Enquiry Officer offered opportunity to the applicant to defend himself and the applicant preferred an appeal before the Appellate Authority against the order of punishment, but the appeal came to be rejected by order dated 11.07.2011, by the Appellate Authority.

It is further pleaded by the bank that charges levelled against the applicant were very clear and the same were not vague and on 10.7.2009, a customer, "Bajrang Cycle store" having cash credit account No. 20078501940 with Kamptee branch gave an amount of Rs. 2000/- for deposit in its account to the applicant and though the applicant issued the counter foil of the deposit slip bearing the endorsement, "Cash receipt" to the customer, he did not

credit the said amount of Rs. 2000/- in the account of the customer and misappropriated the amount and the account holder vide its letter dated 24.09.2009 made complaint that the amount of Rs. 2000/- was not credited to his account and the said customer again by letter dated 03.11.2009, informed it that the applicant paid him the amount of Rs. 2000/- and so far charge No.2 is concerned, on 08.07.2009, Mrs. Shushama Prabhakar Piparod having saving account No. 20078628107 (Old No. 31288) with Kamptee branch deposited an amount of Rs. 4360/- in cash with the applicant and the applicant issued a counter foil bearing a stamp "cash received" to her, but he did not credit the amount to the account of the said customer and misappropriated the amount and the said account holder by her letter dated 24.09.2009 made complaint that the amount of Rs. 4360/- was not deposited in her account and subsequently, she intimated that the applicant paid her the amount of Rs. 4360/- and such action of the applicant amounted to commission of misconduct under clause 5(d) and 5(j) of the aforesaid memorandum of settlement and accordingly, two charges were levelled against him and the enquiry officer conducted the enquiry in a fair manner by following the proper procedure and the evidence was recorded by him strictly according to the Evidence Act and in the enquiry, both the parties were given the opportunity of examine and re-examine the witnesses and the enquiry was fair and proper and the findings of the Enquiry Officer are based on the evidence adduced in the departmental enquiry and the same are not perverse and the punishment of dismissal from service is just and proper and no differential treatment was given to the applicant and the cases of Shri A.S. Khan and Shri Raju Pathrabe of Jaripatka and Mahal branches respectively are quite different from the case of the applicant and the past record of the applicant is not the criterion for imposing the punishment and in the case of the applicant, commission of serious misconducts involving moral turpitude has been proved and it has not confidence in the applicant and as such, the punishment is just and proper and the workman is not entitled to any relief.

5. No rejoinder has been filed by the applicant.

6. As this is a case of dismissal of the workman from services, as a punishment in the disciplinary proceedings initiated against him, the fairness and otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 21.10.2014, the departmental enquiry conducted against the applicant was held to be legal, proper and in accordance with the principles of natural justice.

7. At the time of argument, it was submitted by the learned advocate for the applicant that the findings of the enquiry Officer were perverse and his approach was mechanical and not impartial and he lost sight of the fact that the burden of proving the charges was that of the management and the charges were not proved against the applicant beyond the shadow of doubt and the

complainants had subsequently stated to have already received the amount and not to have any complaint about the deposits made by them and from such statements, it is clear that a cook and bull story was developed by the management and the Enquiry Officer did not notice the above said glaring discrepancies in the evidence recorded by him and the Enquiry Officer also did not consider the facts that the applicant was not in the receipt counter, but he was in the payment counter on 10.07.2009 and the Enquiry Officer did not analyze the evidence judiciously and the findings of the Enquiry Officer are without just and proper reasoning and the punishment of dismissal without notice imposed against the workman is disproportionate and unwarranted and the applicant has been singled out by the Disciplinary Authority for award the highest punishment of dismissal from service without notice and it is clear from the document, Ext. W-V that one Shri A.S. Khan, who was charge sheeted under clauses 5(d) and 5(J) of the Bipartite Settlement like that of the applicant was awarded the punishment of compulsory retirement by the same Disciplinary Authority and the applicant has been discriminated and before imposition of the punishment, the past service record of the applicant was not considered and as such, the applicant is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the respondent that by order dated 21.10.2014, the Tribunal has already declared the departmental enquiry conducted against the applicant to be valid and in accordance with the principles of natural justice and the findings of the Enquiry Officer are based on the evidence on record of the enquiry and the findings are not perverse and commission of serious misconduct by the applicant has been proved against the applicant in a properly conducted departmental enquiry and for that the punishment imposed against the applicant cannot be said to be shockingly disproportionate and there is no scope to interfere with the punishment and the allegations made against the applicant and Shri A.S. Khan were quite different from each other and as such, it cannot be said that the applicant was discriminated and the punishment imposed against the applicant is just and proper and the applicant is not entitled to any relief.

In support of the submissions, the learned advocate for the respondent placed reliance on the decisions reported in 2014 in III CLR-42 (Amrendra Kumar Sing Vs. Central Bank of India), 1999 I CLR-499 (Kuldip Singh Vs. Commissioner of Police), (2011) 6 SCC-3769 Commissioner of Police Vs. Jaibhagwan and (2010) 7SCC-6789 East Coast Railway Vs. Mahadev Apparao).

9. Before delving into the merit of the case in hand, I think it proper to mention the principles enunciated by the Hon'ble Apex Court in regard to the applicant of the Evidence Act of departmental proceedings and the requirements in a departmental enquiry to prove the charges against the delinquent workman.

It is well settled by the Hon'ble Apex Court that:

"Departmental enquiry- Not bound by strict rules of Evidence Act, but fair play and natural justice. Only total absence but not sufficiency of evidence before Tribunal is ground for interference.

** ** *

If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the punishment can be lawfully imposed and is imposed on the proved misconduct, the tribunal has no power to substitute its own discretion for that of the authority.

** ** *

A disciplinary proceedings is not a criminal trial. The standard of proof required is that of preponderance of probability and not proved beyond reasonable doubt.

Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the Tribunal to review the materials. If the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the Tribunal.

** ** *

Where the employer has lost confidence and faith in such employee and choose to remove that employee, there is no scope of misplaced sympathy to interfere with the quantum of punishment.

** ** *

In case of such nature - Indeed, in cases involving corruption — there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest.

** ** *

Now, the case in hand is to be considered with the touch stone of the principles enunciated by the Hon'ble Apex Court, as mentioned above.

10. The first contention raised by the learned advocate for the applicant is that the charges levelled against the applicant were vague and the vagueness goes to the root of the charge sheet submitted against the applicant and the punishment imposed against the applicant, basing on such defective charges cannot be sustained.

On perusal of the charge sheet, Ext. M-I, it is found that the charges levelled against the applicant were mentioned in detail and the lists of documents and the witnesses were enclosed with the same as annexure I and

II. The clauses of the Bipartite Settlement were also clearly mentioned in the charges sheet. So, it cannot be said that the charges levelled against the applicant were vague. Hence, there is no force in the submissions made by the learned advocate for the applicant on the score.

11. So far the submission made by the learned advocate for the applicant that one Shri S.M. Khan was awarded the punishment of compulsory retirement, where as the applicant was dismissed from service by the same authority, even though, both of them were charge sheeted under the same clauses of the Settlement and the applicant was discriminated is concerned, it is to be mentioned here that awarding of a lesser punishment to another delinquent is not a good ground for judicial interference with the quantum of punishment. Moreover, it is found from the record that the allegations in the case of the applicant and that against Shri S.M. Khan were contextually different. Hence, I find no force in the contention made by the learned advocate for the applicant in that regard.

12. On perusal of the proceedings of the departmental enquiry held against the applicant, it is found that the Enquiry Officer has dealt with the charges chronologically. The evidence in support of the charges has been properly assessed by the Enquiry Officer in reaching the conclusions by him. The pleas taken by the applicant were also duly taken into consideration by the Enquiry Officer. The Enquiry Officer has also assigned cogent reasons in support of his findings. The findings of the Enquiry officer are based on the materials on record and the findings are not as such, which cannot be arrived at by any prudent man on the evidence on record. Hence, it is found that the findings of the Enquiry Officer are not perverse.

13. So far the proportionality of the punishment is concerned, it is found that grave misconduct under clauses 5 (d) and 5 (j) of the memorandum of Bi-partite settlement dated 10.04.2002 for willful damage and attempt to cause damage to the property of the Bank and doing an act prejudicial to the interest of the Bank respectively has been proved in a properly conducted departmental enquiry. So, the punishment of dismissal from service without notice imposed against the applicant cannot be said to be shockingly disproportionate, calling for any interference. Hence, there is no scope to interfere with the punishment. Hence it is ordered.

ORDER

The order dated 29.03.2011 passed by the management of the Bank awarding the punishment of dismissal from service without notice against the applicant is just and proper. The applicant is not entitled to any relief. The application is rejected, being devoid of any merit.

J. P. CHAND, Presiding Officer

नई दिल्ली, 13 जुलाई, 2015

का.आ. 1457.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयर फोर्स स्टेशन,

बठिंडा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय. 2 चंडीगढ़ के पंचाट (संदर्भ सं० 1262/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.07.2015 को प्राप्त हुआ था।

[सं एल-14012/14/2005-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1457.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 1262/2006) of the Central Government Industrial Tribunal Cum Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Air Force Station, Bathinda and their workman, which was received by the Central Government on 13.07.2015.

[No. L-14012/14/2005-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH,

Present: Sri Kewal Krishan, Presiding Officer.

Case No. I.D. No. 1262/2006

Registered on 25.4.2006

Sh. Darshan Singh, S/o Sh. Sarwan Singh,
C/o Sh. N.K. Jeet, President,
Punjab Telecom & General Labour
Union-27349, Mohalla Hari Nagar,
Lal Singh Basti Road, Bathinda.

.... Petitioner

Versus

The Station Commander,
Air Force Station,
Bhissiana, Bathinda.

.... Respondents

APPEARANCES

for the Workman Sh. P.K. Longia, Adv.
For the Management Sh. R.N. Sharma, Adv.

AWARD

Passed on 29.6.2015

Central Government vide Notification No. L-14012/14/2005-IR(DU) Dated 12.4.2006, by exercising its powers under

Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Station Commander, Air Force Station, Bhisiana in terminating the services of Sh. Baldev Singh, Ex-Asamia Labour *w.e.f.* 10.12.2004 without complying the statutory provisions of the ID Act, 1947 is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he was employed as Asamia Labour (workman) since January, 1997 in the office of the respondent management and was getting Rs. 2210/- as monthly pay. He continuously worked till 10.12.2004 when his services were terminated without serving him any notice or paying him any retrenchment compensation. That the persons junior to him were retained in service. Therefore, termination of his services is illegal.

Respondent management controverted the averments in this written statement and pleaded that workman was engaged occasionally as unskilled casual labour to meet the exigencies of the work and was not employed continuously. His engagement was as follows:—

Months	Years			
	(Details of the days of engagement on daily wage basis)			
	2001	2002	2003	2004
January	-	24	21	14
February	-	09	10	08
March	-	18	16	09
April	-	-	11	02
May	-	15	11	13
June	-	13	11	14
July	-	04	06	16
August	-	07	20	16
September	-	08	18	18
October	-	04	16	11
November	17	09	17	06
December	12	04	15	06
Total	29	115	172	133

Since the workman was never employed, the question of his termination do not arise. It is further pleaded that management is carrying on sovereign functions being a part of Defence and is not an 'industry'.

Parties were given opportunities to lead their evidence.

In support of their case, workman appeared in the witness box and filled his affidavit reiterating the stand taken by him in the statement of claim. He has also examined Major Singh, who deposed that workman was working with the respondent management.

On the other hand, respondent management has examined Squadron Leader K. Srikanth, who filed his affidavit reiterating the stand of the respondent management taken in the written statement.

I have heard Sh. P.K. Longia, counsel for the workman and Sh. R.N. Sharma, counsel for the management.

It was contended by the learned counsel for the management that respondent management is a part of the Defence Forces and therefore, is not an 'Industry'. Opposing this, it was argued by the learned counsel for the workman that the definition of 'Industry' is of very wide import and even part of the Defence establishment, falls within it and placed reliance on Soundararajan and others Vs. Secretary to Government of India, Ministry of Labour, New Delhi and another, reported in 1994(2) LLJ 665 wherein, the Hon'ble Madras High Court has held that the Ordnance Depot under the Armed Ordnance Corps though is a part of Defence service, but is an 'industry'.

I have considered the respective contentions.

The definition of 'industry' came for consideration before the Hon'ble Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others reported in AIR 1978 LAB. I.C. 467, wherein, it was observed by His Lordships in para 161 of the judgements as follows:—

'Industry', as defined in Section 2(j) and explained in Banerji (AIR 1953 SC 58) has a wide import.

- (a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants; and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss *i.e.* making on a large scale Prasad or food) *prima facie*, there is an industry in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

It was further observed that sovereign functions performed do not fall within the definition of 'Industry'.

There is hardly any dispute that Defence forces perform sovereign functions and do not fall within the definition of 'industry'. There is nothing on the file that any systematic activity is conducted by the respondent management with the cooperation of the workman and for production or distribution of goods and services. The workman has simply pleaded "Station Commander, Air Force Station, Bhisiana" and 'Station Commander' cannot be termed as an 'industry'. The workman knew from the very beginning that an objection has been taken by the respondent management denying its status as 'industry' but workman did not lead any evidence to prove the said fact. As much as the description given of the respondent management in the statement of claim do not fall within the definition of 'industry' and since the Defence Forces do 'sovereign functions' and on that account also, respondent management is not an 'industry'. In the circumstances, the ratio of Soundararajan and others Vs. Secretary to Government of India, Ministry of Labour, New Delhi and another case (supra) is not applicable to the facts of the present case.

Though the workman has alleged that he was employed as labour in January, 1997 and was getting Rs. 2210/- as monthly pay but no cogent evidence has come in this respect except the bare statements of the workman and his witness. The definite case of the management is that he was employed as a casual labourer to meet the exigencies of the work firstly in November, 2001 and was lastly engaged in the month of December, 2007 and as per the chart reproduced above, he worked for 29 days in 2001, 115 days in 2002, 172 days in 2003 and 133 days in 2004. Squadron Leader K. Srikanth has specifically deposed in his cross-examination that his affidavit is based on record and he brought the record relating to the workman when appeared in the witness box. In view of the documentary evidence, the workman cannot claim that he was continuously in employment of the respondent management since 1997, rather the record shows that he was occasionally employed in the year 2001 to 2004 and he did not complete 240 days in a calendar year preceding his disengagement from service. Therefore he was not entitled to any retrenchment compensation or the benefits of other provisions of the Act.

In result, the reference is answered holding that the action of the management is not illegal and workman is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 13 जुलाई, 2015

का०आ०. 1458.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रक्षा मंत्रालय एवं

दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2 चंडीगढ़ के पंचाट (संदर्भ सं० 496/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.07.2016 को प्राप्त हुआ था।

[सं० एल-14012/10/99-आई आर(डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1458.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 496/2005) of the Central Government Industrial Tribunal Cum Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Ministry of Defence & others and their workman, which was received by the Central Government on 13.07.2015.

[No.L-14012/10/99-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 496/2005

Registered on 22.8.2005

Sh. Jagdish Singh, S/o Sh. Bhag Singh,
H.No. 585, Deroki Basti,
Baba Hardwari Bagichi, Patiala.

... Petitioner

Versus

1. Ministry of Defence, through the Secretary, Government of India, Raksha Mantralaya, New Delhi.
2. Officer Commanding, 340 Coy, A.S.C. (Supply) C/o 56 A.P.O.

.. Respondents

APPEARANCES

For the Workman Sh. P.K. Longia, Adv.

For the Management Sh. Anish Babbar, Adv.

AWARD

Passed on 29.6.2015

Central Government vide Notification No. L-14012/10/99-IR(DU) dated 21.7.1999, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section

(2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the Commanding Officer, 340, COY ASC (SUP) Type 'B' C/o 56 APO, in terminating the services of Sh. Jagdish Singh S/o Sh. Bhag Singh is legal and justified? If not, to what relief the workman is entitled?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he was appointed by respondent No. 2 through Employment Exchange and he joined the service *w.e.f.* 1.4.1993. His services were terminated *w.e.f.* 24.7.1998. That he was entitled to regularization of services as per Clause 15(1) of the Model Standing Orders issued by respondent No. 1 *vide* his letter dated 22.3.1982 and he was entitled to regular pay scale but instead of regularizing his services, his services were terminated without serving him any notice or holding any inquiry or payment of retrenchment compensation and therefore his services were terminated illegally and he be reinstated in service.

Respondent management filed written reply pleading that workman was not appointed by the respondent management but was hired as a casual labourer on day to day basis as per requirement and he did not work continuously. That the Model Standing Orders are not applicable to him. That he did not complete 240 days of service in a calendar year and therefore he was not entitled to any retrenchment compensation. It was further pleaded that the Ministry of Defence do not fall within the definition of 'industry'.

Parties were given opportunities to lead their evidence.

In support of its case the workman appeared in the witness box and filed his affidavit supporting his case as set out in the claim petition.

On the other hand the management has examined Sh. A.S. Kulsange, who filed his affidavit reiterating the stand taken by the management.

It was vehemently argued by the learned counsel for the respondent management that respondent being Defence services discharge sovereign functions and do not fall within the definition of 'industry'.

On the other hand the learned counsel for the workman submitted that the definition of 'industry' is of very wide import and even part of the Defence establishment, falls within it and placed reliance on Soundararajan and others Vs. Secretary to Government of India, Ministry of Labour, New Delhi and another, reported in 1994 (2) LLJ 665 wherein, the Hon'ble Madras High Court has held that the Ordnance Depot under the Armed Ordnance Corps though is a part

of Defence Service, but is an 'industry'.

I have considered the respective contentions.

The definition of 'industry' came for consideration before the Hon'ble Apex Court in Bangalore Water Supply and Sewerage Board, Vs. A. Rajappa and others reported in AIR 1978 LAB I.C. 467, wherein, it was observed by the Lordships in para 161 of the judgment as follows:—

'Industry', as defined in Section 2(j) and explained in Banerji (AIR 1953 SC 58) has a wide import.

- (a) Where (i) Systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants; and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) *prima facie*, there is an industry in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

It was further observed that sovereign functions performed do not fall within the definition of 'Industry'. There is nothing on the file to suggest that the respondent management was doing any systematic activity by cooperation between the management and the workman for production or distribution of goods and services and it is the case of the workman himself that he was doing the work of loading and unloading. Since the respondent management is covered under the Army Act, the respondent management is not an 'industry'. In the Head Note of the claim petition, the workman has given the description of the respondents as follows:—

- "1. Ministry of Defence, through the Secretary, Government of India, Raksha Mantralaya, New Delhi.
2. Officer Commanding 340 Coy. A.S.C. (Supply) C/o 56 A.P.O."

'Ministry of Defence' as well as 'Officer Commanding' cannot be termed as an 'industry' as impleaded by the workman and there is nothing on the file to suggest that the said respondents fall within the definition of 'Industry'. As such the ratio of Soundararajan and others Vs. Secretary to Government of India, Ministry of Labour, New Delhi and another case (*supra*) is not applicable to the facts of the

present case. The workman has the knowledge that respondent management has taken an objection regarding whether it is an 'industry', but the workman did not lead any evidence to prove this fact and on the face of it, as discussed above, the respondent management is not an 'industry'.

According to the workman, he joined the service *w.e.f.* 1.4.1993 and he continuously served till 24.7.1998. During cross-examination, he was stated that he was not given any appointment letter and he received the job orally which probabalize the case of the respondent management that he was engaged on casual basis as and when required and he was not a regular employee of the respondent management. The workman has relied on the Model Standing Orders issued by respondent No. 1 which deals with the benefits given to the casual labourers and its clause 13 itself provides for the termination of employment of a casual labourer without issuance of any notice and it reads as follows:—

Termination of Employment:—No notice shall be necessary to terminate the employment of a casual workmen but the service of a casual workman shall not to terminated under SC 12 (iii) unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner provided for in S.O. 12(iv).

Thus, as per the Model Standing Orders the services of the casual labourer can be terminated at any time except when there are allegations of misconduct, an inquiry is to be conducted. The management was well within its rights not to engage the workman as a casual labourer and he was not entitled to the protection of the provisions of the Act.

In result, the action of the management in terminating the services of the workman is legal and justified and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 13 जुलाई, 2015

का.आ. 1459.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, चंडीगढ़ के पंचाट (सं 1353/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.07.2015 को प्राप्त हुआ था।

[सं. एल-40012/62/2007-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1459.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1353/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workmen, which was received by the Central Government on 13.07.2015.

[No.L-40012/62/2007-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH
PRESENT : Sri Kewal Krishan, Presiding Officer**

Case No. I.D. No. 1353/2008

Registered on 6.2.2008

Smt. Laxmi Devi,
W/o Shri Ram Kishan,
Village Handesra,
Tehsil Derabassi, Mohali,
Chandigarh

.... Petitioner

Versus

The General Manager,
Telecom Deptt., Bharat Sanchar Nigam Ltd.,
Ambala

.... Respondents

APPEARANCES

For the Workman Shri Arun Batra, Adv.

For the Management Shri Anish Babbar, Adv.

AWARD

Passed on 22.6.2015

Central Government *vide* Notification No. L-40012/62/2007-IR (DU) dated 31.1.2008, by exercising its powers under Section 10 of Sub-section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Bharat Sanchar Nigam Limited, Ambala in terminating the services of their workman Smt. Laxmi Devi *w.e.f.* 9.10.2006 is legal and justified? If not, to what relief the workman is entitled to?"

In response to the notice, the workman appeared and submitted statement of claim pleading that she was working

as part time sweeper for the last 20 years with the respondent management Handesra, Telephone Exchange. Respondent No. 2 issued letter No. GG/70/17/50 dated 18.2.2001 regarding conversion of part-time workers into full time casual labourer and in pursuance thereof a list was prepared and her name was mentioned at serial No. 14, but her services were not converted into full time worker. That the concerned SDE also informed respondent No. 2 *vide* his letter dated 24.12.2001 mentioning her name at serial No. 13. When the respondent management failed to convert her job into full time casual labourer, she served a notice on 4.10.2006 and thereafter respondent No. 2 terminated her services on 9.10.2004.

The services of the workman were terminating without paying her any retrenchment compensation or service of notice though she worked for more than 240 days in a calendar year. That the persons junior to her were retained in service. Being so, termination of her services is illegal and she be reinstated in service with full back wages.

Respondent management filed written reply admitting that Government of India, Department of Telecom, had given one time relaxation to convert part-time casual labourer working less than 4 hours per day into full time casual labourers *vide* letter dated 25.8.2000. Since there was no shortage of 'Group D' employees at Handesra Telephone Exchange and therefore, part-time casual labourers were not converted into full time casual labourer as per the said instructions. That no Safaiwala was engaged for more than 90 days after 1.4.1999. That no person junior to the workman was retained in service. That the claim is misconceived and be dismissed.

Parties were given opportunities to lead their evidence.

In support of its case, workman appeared in the witness box and filed her affidavit supporting the case as set out in the claim petition.

On the other hand, the management has examined Sh. Avtar Singh, SDO who filed his affidavit reiterating the stand of the respondent management.

I have heard Sh. Arun Batra, Counsel for the workman and Sh. Anish Babbar, counsel for the management.

It was argued by the learned counsel for the management that only one time relaxation was given for conversion of part-time casual labourers working for less than 4 hours per day into full time casual labourers *vide* letter dated 25.8.2000 and as per Clause 4 of the said letter where there was no shortage of 'Group D' employees, part-time casual labourers were not to be converted into full time casual labourers and since there was no shortage of 'Group D' employees, the services of the workman was not converted into full time casual labourers and the claim filed by the workman is without basis.

I have considered the contention of the learned

counsel.

Though, workman has pleaded that she was entitled to be converted into full time casual labourer as per the said letter. But the question to be seen is whether the workman worked with the respondent management and her services were terminated without serving any notice or payment of retrenchment compensation as required under Section 25-F of the Act.

Workman has specifically pleaded in para 1 of the claim petition that she worked as Sweeper with the respondent management at Handesra Telephone Exchange for 20 years as part-time sweeper. The management pleaded in para 2 of the preliminary objections that the management neither issued any appointment letter nor any termination letter to the workman but again pleaded in para 1 of the written statement on merit that there were only two rooms for the Telephone Exchange during the working tenure of the claimant. It again pleaded in para 11 of the written statement on merit that the workman was engaged for cleaning the Exchange before 1.4.1999. Thus the respondent management admits that workman was engaged by it for cleaning the Telephone Exchange.

The stand taken by the management is that she was engaged only before 1.4.1999. Workman has pleaded in para 3 of the statement of claim that her name was mentioned at serial No. 14 of the list prepared for converting the part-time workers into full time casual labourer. This fact is admitted by the respondent management in its reply and the same also do find mention in the letter dated 25.2.2001 (Exhibit A3) of the Sub-Divisional Engineer. The opening lines of the said letter are relevant and are reproduced as follows:—

The following part-time workers working less than four hours are to be converted into full time casual worker as per intimation of higher authorities. As such please intimate the date from which they are working in your sub-division, so that necessary action for their conversion into full time casual worker can be taken by this office at an early.

Thus, an intimation was sought regarding the date from which workmen including present workman were working and the name of the workman do appear in the list mentioned in this letter. Meaning thereby, the workman was in service in the year 2001 which totally falsified the stand taken by the management that she was not engaged after 1.4.1999 and being so, the averments as made by the workman that her services were terminated in the year 2006 are to be taken as correct.

No doubt, the witness of the management namely Sh. Avtar Singh has stated during cross-examination that there was no record for engaging persons for safai work and stated that payment was made from the temporary advance but again did not produce any receipts. Thus the best record available with the respondent management has

been withheld and adverse inference is to be drawn that the workman worked with the respondent management till 9.10.2006 as pleaded by her.

It is the specific case of the workman that she worked continuously for 20 years which has not been specifically denied and it is only pleaded that she was engaged before 1.4.1999 which is not proved on the file, as discussed above. Therefore it is to be taken that she worked for the period as alleged by her and it leaves no doubt that she completed 240 days of service in a calendar year prior to the termination of her services.

It is admitted fact that no notice was served to her prior to termination of her services nor she was paid any retrenchment compensation and therefore the termination of her services is illegal.

The next question to be seen is whether she can be reinstated in service or be paid compensation. There is noting on the file that she was appointed as part-time sweeper as per rules and regulations of the department and being so, she cannot be ordered to be reinstated in service. However, compensation is to be given to her for illegal termination of her services. She has a quite length of service to her credit though she did not plead about her salary. Considering the entirety of the facts Rs. 1 lac is suitable compensation which is to be paid to her.

In result, the reference is answered holding that termination of the services of the workman namely Smt. Laxmi Devi is not legal and she is entitled to get Rs. 1 lac as compensation from the respondent management who shall pay to the workman within 1 month from the publication of the award failing which the workman will be entitled to get interest at the rate of 6 per cent per annum from the date of the award till realization.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 13 जुलाई, 2015

का०आ. 1460.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, चंडीगढ़ के पंचाट (संदर्भ सं. 106/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.07.2015 को प्राप्त हुआ था।

[सं. एल-40012/105/2014-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 13th July, 2015

S.O. 1460.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 106/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh now as shown in the

Annexure, in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 13.07.2015.

[No. L-40012/105/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Shri Kewal Krishan, Presiding Officer

Case No. I.D. No. 106/2014

Registered on 2.3.2015

Sh. Mukesh Kumar, S/o Sh. Bharu Ram,
R/o Village Kundan Pura,
Uklana Mandi, Hisar.

.... Petitioner

Versus

The General Manager,
Bharat Sanchar Nigam Ltd.,
Red Square Market Railway Road,
Main Office, Hisar.

.... Respondents

APPEARANCES

For the workman Sh. Jang Bahadur, AR.

For the Management Sh. Kailash Sharma, Adv.

AWARD

Passed on 17.6.2015

Central Government *vide* Notification No. L-40012/105/2014 (IR (DU)) Dated 4.2.2015, by exercising its powers under Section 10 of sub-section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Bharat Sanchar Nigam Limited, Hisar in terminating the services of Sh. Mukesh Kumar S/o Sh. Bharu Ram *w.e.f* 10.11.2013 is valid and legal? If not, to what relief the concerned workman is entitled to and from which date?"

In response to the notice, the workman appeared through Authorized Representative who made statement on 2.6.2015 claiming no relief in the present reference.

In result, the reference is answered that workman is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 14 जुलाई, 2015

कांआ 1461.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट संदर्भ संख्या (100/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/07/2015 को प्राप्त हुआ था।

[सं. एल-41011/13/2011-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th July, 2015

S.O. 1461.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.100/2011) of the Cent.Govt, Indus. Tribunal -cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 14/07/2015

[No. L-41011/13/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL - CUM-LABOUR COURT, LUCKNOW

PRESENT

RAKESH KUMAR
PRESIDING OFFICER

I.D. NO. 100/2011

Ref. No. L-41011/13/2011-IR(B-I) dated: 26.05.2011

BETWEEN

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kanauri (Premwati Nagar)
Post- Manak Nagar
Lucknow-16.
(Espousing cause of Shri Om Prakash Verma)

AND

Senior Divisional Personnel Officer
Northern Railway
DRM Office, Hazratganj
Lucknow

AWARD

1. By order No. L-41011/13/2011-IR(B-I) dated: 26.05.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) referred this

industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kanauri (Premwati Nagar), Post - Manak Nagar, Lucknow and Senior Divisional Personnel Officer, Northern Railway, DRM Officer, Hazratganj, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"Whether the demand of the Union regarding placement of Shri Om Prakash Verma S/o Shri Shyam Lal Verma assistant Loco Pilot, Locoshed, Lucknow in the penal of 1983-84 above his juniors and grant of pay benefits accordingly is legal and justified? To what relief the union is entitled?"

The case of the workman's union in brief, is that the workman, Om Prakash Verma was appointed as cleaner *w.e.f.* 01.06.1979 and worked as such till 03.09.1981 continuously, when he had been retrenched *w.e.f.* 04.09.1981 illegally. The workman challenged his retrenchment before CGIT-cum-Labour Court, Kanpur in I.D. No. 48/83 and 163/1983 and the Tribunal was pleased to reinstate the workman with back wages from the date of retrenchment *vide* their award dated 19.02.1987 and 25.11.1985. The management challenged the award of CGIT, Kanpur before Hon'ble High Court, which was rejected; likewise the SLP too before Hon'ble Apex Court was rejected; accordingly, the workman was reinstated on 04.08.1983. It is alleged that the management *vide* its order No. 220 E/1-5/screening/ Loco dated 30.08.1991 regularized the workman on the post of Loco Cleaner; whereas it absorbed other junior workmen in the panel for the year 1983-84 on the basis of 120 days working up to 30.09.1998, which is in violation to the provisions of Railways Rules. It is submitted by the workman's union that Shri Amarjeet Singh & Shri Abdul Aziz were also included in the panel for year 1992 but later on included in the panel of year 1983-84 on the orders of Hon'ble CAT, Lucknow. Likewise, other workman *Viz.* Shri Pratap Bahadur & Ahmad Ali, Who were earlier included in panel for the year 1992 were include in the panel for year 83-84 as per order of this Tribunal. Accordingly, the workman's union has prayed that the name of the workman, Om Prakash Verma be included in the panel of the year 83-84 which consequently benefits.

4. The management of the railways has filed its written statement, denying the claim of the workman's union and has contended that the workmen's union has sought the relief placing the name of the workman in the panel of year 1983-84, which is not permissible because of the seniority of the other employees will be effected and they are not arrayed as party in the present industrial dispute and if the relief is granted, several other workers may prefer the matter in courts since their seniority shall be affected. The management has specifically submitted that the industrial dispute has been referred after lapses of more than 25 years without any rhyme or reason or any sufficient explanation; and accordingly, the same is liable to be rejected on the

point of limitation.

5. The workman's union has filed its rejoinder wherein apart from reiterating facts already mentioned in the statement claim has submitted that there is no limitation provided in the Industrial Dispute Act. 1947.

6. The parties filed documentary as well as oral evidence in support of their respective case and forwarded oral arguments.

7. Heard learned authorized representatives of the parties at length and perused entire evidence on record.

9. The authorized representative of the workman has contended that since the termination dated 04.09.1981 has been held illegal and the workman had been reinstated with consequential benefits, therefore he is entitled for inclusion in the panel of year 1983-1984. He has relied upon:

- (i) N. Balakrishnan vs. M. Krishnamurthy 1998 ACJ 1347.

10. In rebuttal, the authorized representative of the management has contended that the workman was screened and rightly placed in the seniority panel *vide* order dated 30.08.1991. The management has vehemently contended that the workman is not entitled to be included in the panel for the year 1983-84, inasmuch as the present industrial dispute is time barred and the workmen has raised this industrial dispute when he found that some other workmen got benefit from different Court/ Tribunals. The management has relied on:

- (i) M. Ramakotaiah & Others vs. Union of India & others 2007 (6) AWC 6556 (SC).

11. I have given my thoughtful consideration to the rival contentions of the learned authorized representatives of the parties and scanned the entire evidence available on record.

12. Admittedly, the workman has been terminated *w.e.f.* 04.09.1981 and his termination had been declared to be illegal and was reinstated with back wages by the CGIT-cum-Labour Court, Kanpur. Also, the Hon'ble High Court in writ petition, filed by the management of railways, upheld the award regarding reinstatement and the management in compliance of award reinstated the workman and paid him back wages. However, the management's contention over the issue referred to this Tribunal is, that the workman was screened and was rightly placed in the seniority panel for 1991 and he is not entitled for inclusion in the panel for year 1983 as he was not in service at that point of time; more so because the present industrial dispute has been raised after lapse of more than 25 years.

13. Thus, the question to be adjudicated is as to whether the workman is entitled to be included in the seniority panel of 83-84, which was denied to him, consequent upon his termination in the said year? It is admitted fact that the workman was not in service due to

illegal termination in the relevant year 1983, when the seniority panel was drawn and his name was not considered. The termination of the workman was quashed by the CGIT-cum-Labour Court, Kanpur and in compliance thereof the management reinstated the workman, treating the termination as non-est and paid back wages in compliance of the order of the Hon'ble High Court.

As per award of the CGIT-cum-Labour Court, Kanpur the reinstatement order was not qualified one to be given effect to the extent of monetary benefits only. As per settled procedure, logically and legally reinstatement required grant of all service benefits including seniority as if the termination had not taken place. The management complied with the order of reinstatement without giving seniority and released monetary benefits to the workman. On the quashing of termination order, it has to be assumed that the workman was never been terminated and continued to be in service notionally. The effect of the reinstatement is that the workman, Om Prakash Verma would be deemed in service on the last post held on the date of termination. Accordingly, he is entitled for preference over his juniors and to be included in the seniority panel for the year 1983-1984.

14. The management of the railways has come up with a contention that the present industrial dispute is time barred as it has been raised after lapse of more than 25 years. The workman's witness during his cross-examination stated that he made oral objection against inclusion of name in the panel of 91-92 and for delay he stated that the management kept on assuring that he will be included in the panel of 83-84, therefore, he did not raise the dispute. He further, stated that when the names of Amarjeet Singh, Pratap Bahadur, Ahmad Ali and Abdul Aziz were added in the panel of 83-84 due to Court's order, he also raised the industrial dispute. The authorized representative has contended that the workman has not given any reliable explanation for inordinate delay of 25 years; rather he turned up when the other got successful. He stressed that the order of the Hon'ble CAT, Lucknow Bench, Lucknow in respect of Amarjeet Singh was delivered on 26.04.1993; but the workman has raised present industrial dispute in 2011, without any explanation.

15. The management has relied upon N. Balakrishnan vs. M. Krishnamurthy 1998 ACJ 1347; wherein Hon'ble Apex Court while dealing with the matter of delay has observed that length of delay does not matter, acceptability of the explanation is the only criterion.

In Chennai Metropolitan Water Supply and Sewerage Board & others vs T.T. Murali Babu 2014 (141) FLR 772, Hon'ble Apex Court has observed as under:

"The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a Constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved

person, without adequate reason approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the list at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring a hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the Court, yet the writ Court chose not to address the same. It is the duty of the Court to scrutinize whether such enormous delay is to be ignored without any justification."

Further, in *Dr. Jawahar Lal Rohtagi Memorial Eye Hospital vs State of U.P. & others* 2013 (138) FLR 11 Hon'ble Allahabad High Court upholding the action of the State Government in denying the making reference of case after 22 years held that it is not expedient for State Government to refer against order of termination dated 26.6.1982 being old and state case, where the workman filed an application raising industrial dispute after 22 years in 2004. Hon'ble High Court observed that there is nothing to indicate as to why the workmen could not approach the authority under the ID Act. On the issue of delay the workman has tried to explain his delay by pleading that he kept on requesting the authorities who assured him of fruitful. There is no other explanation about delay.

Thus, from the face of record it is crystal clear that the workman did not bother to approach the management or any legal forum for redressal of his grievances for more than 20 years; and he approached this Tribunal when he come to know about favourable order of courts in similar nature of cases, which points out towards opportunism of the workman. Moreover, the explanation forwarded by the workmen's union before this Tribunal is insufficient.

16. In the present case, admittedly there is delay of approximately 20 years as he was screened *vide* order dated 30.08.1991. The workman's union failed to give any logical explanation for this inordinate delay of 20 years. Hon'ble Apex Court in *Ajaib Singh vs. Sirhind Co-operative Marketing-cum-Processing Services Society Ltd. & another* 1999 LAB IC 1435 where there was admitted delay of seven years has held that the Court can mould relief by refusing back wages or directing payment of part of back wages.

17. Thus, from the facts and circumstances of the case laws cited hereinabove, I am of considered opinion that the action of the management of Central Railway in not including the name of the workman in the panel for year 1983-84 was illegal and unjustified. Accordingly, I come to

the conclusion that the workman, Sri Om Prakash Verma is entitled for placement in the panel of 1983-1984 above his juniors, subject to his suitability under Rules. He shall be entitled to services benefits under Rules; however, he would be liable for payment of only 1/3rd of back wages, in view of delay in raising the present industrial dispute.

18. The reference under adjudication is answered accordingly.

19. Award as above.

RAKESH KUMAR, Presiding Officer

LUCKNOW

2nd July, 2015.

नई दिल्ली, 14 जुलाई, 2015

का.आ. 1462.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम एस युरिका फोरबेस लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकाता के पंचाट संदर्भ संख्या (63/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.07.2015 प्राप्त हुआ था।

[सं. एल-41011/60/2014-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14h July, 2015

S.O. 1462.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 63/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of M/s. Eureka Forbes Ltd. and their workmen, received by the Central Government on 14.07.2015.

[No.L-41011/60/2014-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

AT KOLKATA

Reference No. 63 of 2014

Parties: Employers in relation to the management of
Sourth Eastern Railway

AND

Their workmen

Present: JUSTICE DIPAK SAHA RAY,
Presiding Officer

APPEARANCE

On behalf of the Management : Mrs. Sujata Chowdhry, Ld. Counsel for S.E. Railway, None for M/s Eureka Forbes Ltd.

On behalf of the Workmen : None.

State : West Bengal Industry : Railway.

Dated: 2nd July, 2015

AWARD

By Order No. L-41011/60/2014-IR(B-1) dated 28.08.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"(1) Whether the action of the management of M/s. Eureka Forbes Ltd., contractor of South Eastern Railway by not paying festival bonus to 350 (List Enclosed) contract labourers for accounting year 2011-12 is justified or not? If not, what relief the workmen are entitled for? (2) Whether the workmen are entitled for interest for delayed payment of bonus by the management? If not, what relief the workmen are entitled to?"

2. When the case was taken up for hearing on 30.06.2015 none appeared on behalf of the union though South Eastern Railway and M/s. Eureka Forbes Limited were represented by their respective Ld. Counsel. It appears from the record that inspite of receiving notice, the union has not turned up for the previous four consecutive dates.

3. Considering the above facts and circumstances it appears that the union at whose instance the present reference has been initiated is not interested to proceed with the case further. So, no fruitful purpose will be served in keeping the matter pending.

4. In view of the above facts and circumstances, present reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,
The 2nd July, 2015.

नई दिल्ली, 14 जुलाई, 2015

का.आ. 1463.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट संदर्भ संख्या (35/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/07/2015 प्राप्त हुआ था।

[सं एल-41011/104/2010-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th July, 2015

S.O. 1463.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 35/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 14/07/2015.

[No. L-41011/104/2010-IR(B-1)]
SUMATI SAKLANI, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT**

RAKESH KUMAR : Presiding Officer
I.D. No. 35/2011

Ref. No. L-41011/104/2010-IR(B-1) dated: 14.03.2011

BETWEEN

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kananora (Premwati Nagar)
PO-Manak Nagar
Lucknow-16.
(Espousing cause of Sri N.K. Mehta)

AND

Senior Divisional Railway Manager (Personnel)
Northern Railway, Hazratganj
Lucknow.

AWARD

1. By order No. L-41011/104/2010-IR(B-1) dated: 14.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kananora (Premwati Nagar), PO-Manak Nagar, Lucknow and Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"Whether the demand of the union regarding placement of Shri Ashok Kumar Mishra s/o Shri S.K. Mishra, assistant loco pilot, loco-shed, Lucknow in the penal of 1983-84 above his juniors and grant of pay benefits accordingly is legal and Justified? To what relief the Union is entitled?"

3. The case of the workman's union, in brief, is that the workman, Ashok Kumar Mishra was appointed as cleaner *w.e.f.* 11.03.1977 and worked as such till 03.09.1981 continuously, when he had been retrenched *w.e.f.* 04.09.1981 illegally. The workman challenged his retrenchment before CGIT-cum-Labour Court, Kanpur in I.D. No. 48/83 and 163/1983 and the Tribunal was pleased to reinstate the workman with back wages from the date of retrenchment *vide* their award dated 19.02.1987 and 25.11.1985. The management challenged the award of CGIT, Kanpur before Hon'ble High Court, which was rejected; likewise the SLP too before Hon'ble Apex Court was rejected; accordingly, the workman was reinstated on 04.08.1983. It is alleged that the management *vide* its order No. 220 E/1-5/Screening/Loco dated 30.08.1991 regularized the workman on the post of Loco Cleaner; whereas it absorbed other junior workmen in the panel for the year 1983-84 on the basis of 120 days working up to 30.09.1988, which is in violation to the provisions of Railway Rules. It is submitted by the workman's union that Shri Amarjeet Singh & Sri Abdul Aziz were also included in the panel for year 1992 but later on included in the panel of year 1983-84 on the orders of Hon'ble CAT, Lucknow, Likewise, other workmen *viz.* Sri Pratap Bahadur & Ahmad Ali, who were earlier, included in panel for the year 1992 were included in the panel for year 83-84 as per order of this Tribunal. Accordingly, the workman's union has prayed that the name of the workman, Ashok Kumar Mishra be included in the panel of the year 83-84 which consequential benefits.

4. The management of the railways has filed its written statement, denying the claim of the workman's union and has contended that the workman's union has sought the relief placing the name of the workman in the panel of year 1983-84, which is not permissible because of the seniority of other employees will be effected and they are not arrayed as party in present industrial dispute and if the relief is granted, several other workers may prefer the matter in courts since their seniority shall be affected. The management has specifically submitted that the industrial dispute has been referred after lapse of more than 25 years without any rhyme or reason or any sufficient explanation; and accordingly, the same is liable to be rejected on the point of limitation.

5. The workman's union has filed its rejoinder wherein apart from reiterating facts already mentioned in the statement claim has submitted that there is no limitation provided in the Industrial Disputes Act, 1947.

6. The parties filed documentary as well as oral evidence in support of their respective case and forwarded oral arguments.

7. Heard learned authorized representatives of the parties at length and perused entire evidence on record.

8. The authorized representative of the workman has contended that since the termination dated 04.09.1981 has been held illegal and the workman had been reinstated with consequential benefits, therefore he is entitled for inclusion in the panel of year 1983-1984. He has relied upon:

(i) N. Balakrishnan Vs. M. Krishnamurthy 1998 ACJ 1347.

9. In rebuttal, the authorized representative of the management has contended that the workman was screened and rightly placed in the seniority panel *vide* order dated 30.08.1991. The management has vehemently contended that the workman is not entitled to be included in the panel for the year 1983-84, in as much as the present industrial dispute is time barred and the workman has raised this industrial dispute when he found that some other workmen got benefit from different Court/Tribunals. The management has relied on:

(i) M. Ramakotaiah & others Vs. Union of India & others 2007 (6) AWC 6556 (SC).

10. I have given my thoughtful consideration to the rival contentions of the learned authorized representatives of the parties and scanned the entire evidence available on record.

11. Admittedly, the workman had been terminated *w.e.f.* 04.09.1981 and his termination had been declared to be illegal and was reinstated with back wages by the CGIT-cum-Labour Court, Kanpur. Also, the Hon'ble High Court in writ petition, filed by the management of railways, upheld the award regarding reinstatement and the management in compliance of award reinstated the workman and paid him back wages. However, the management's contention over the issue referred to this Tribunal is, that the workman was screened and was rightly placed in the seniority panel for 1991 and he is not entitled for inclusion in the panel for year 1983 as he was not in service at that point of time; more so because the present industrial dispute has been raised after lapse of more than 25 years.

12. Thus, the question to be adjudicated is as to whether the workman is entitled to be included in the seniority panel of 83-84, which was denied to him, consequent upon his termination in the said year? It is admitted fact that the workman was not in service due to illegal termination in the relevant year 1983, when the seniority panel was drawn and his name was not considered. The termination of the workman was quashed by the CGIT-cum-Labour, Kanpur and in compliance thereof the management reinstated the workman, treating the termination as non-est and paid back wages in compliance of the order of the Hon'ble High Court.

As per award of the CGIT-cum-Labour Court, Kanpur, the reinstatement order was not qualified one to be given effect to the extent of monetary benefits only. As per settled procedure, logically and legally reinstatement required grant of all service benefits including seniority as if the termination had not taken place. The management complied with the order of reinstatement without giving seniority and released monetary benefits to the workman. On the quashing of termination order, it has to be assumed that the workman was never been terminated and continued to be in service notionally. The effect of the reinstatement is that the workman, Ashok Kumar Mishra would be deemed in service on the last post held on the date of termination. Accordingly, he is entitled for preference over his juniors and to be included in the seniority panel for the year 1983-1984.

13. The management of the railways has come up with a contention that the present industrial dispute is time barred as it has been raised after lapse of more than 25 years. The workman's witness during his cross-examination stated that he did not make any written objection against inclusion of name in the panel of 1992 and for delay he stated that the management kept on assuring that he will be included in the panel of 83-84, therefore, he did not raise the dispute. He further, stated that when the names of Amarjeet Singh, Pratap Bahadur, Ahmad Ali and Abdul Aziz were added in the panel of 83-84 due to Court's order, he also raised the industrial dispute. The authorized representative has contended that the workman has not given any reliable explanation for inordinate delay of 25 years; rather he turned up when the other got successful. He stressed that the order of the Hon'ble CAT, Lucknow Bench, Lucknow in respect of Amarjeet Singh was delivered on 26.04.1993; but the workman has raised present industrial dispute in 2011, without any explanation.

14. The management has relied upon N. Balakrishnan Vs. M. Krishnamurthy 1998 ACJ 1347; wherein Hon'ble Apex Court while dealing with the matter of delay has observed that length of delay does not matter, acceptability of the explanation is the only criterion.

In Chennai Metropolitan Water Supply and Sewerage Board & Others Vs. T.T. Murali Babu 2014 (141) FLR 772, Hon'ble Apex Court has observed as under:

"The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a Constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain

circumstances delay and laches may be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring a hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the Court, yet the writ Court chose not to address the same. It is the duty of the Court to scrutinize whether such enormous delay is to be ignored without any justification."

15. Further, in Dr. Jawahar Lal Rohatgi Memorial Eye Hospital Vs. State of U.P. & others 2013 (138) FLR 11 Hon'ble Allahabad High Court upholding the action of the State Government in denying the making reference of case after 22 years held that it is not expedient for State Government to refer against order of termination dated 26.6.1982 being old and stale case, where the workman filed an application raising industrial dispute after 22 years in 2004. Hon'ble High Court observed that there is nothing to indicate as to why the workman could not approach the authority under the ID Act. On the issue of delay the workman has tried to explain his delay by pleading that he kept on requesting the authorities who assured him of fruitful. There is no other explanation about delay.

Thus, from the face of record it is crystal clear that the workman did not bother to approach the management or any legal forum for redressal of his grievances for more than 20 years; and he approached this Tribunal when he come to know about favourable order of courts in similar nature of cases, which points out towards opportunism of the workman. Moreover, the explanation forwarded by the workman's union before this Tribunal is insufficient.

16. In the present case, admittedly there is delay of approximately 20 years as he was screened *vide* order dated 30.08.1991. The workman's union failed to give any logical explanation for this inordinate delay of 20 years. Hon'ble Apex Court in Ajaib Singh Vs. Sirhind Co-operative Marketing-cum-Processing Services Society Ltd. & another 1999 LAB IC 1435 where there was admitted delay of seven years has held that the Court can mould relief by refusing back wages or directing payment of part of back wages.

16. Thus, from the facts and circumstances of the case and the case laws cited hereinabove, I am of considered opinion that the action of the management of Central Railway in not including the name of the workman in the panel for year 83-84 was illegal and unjustified. Accordingly, I come to the conclusion that the workman, Sri Ashok Kumar Mishra is entitled for placement in the panel of 1983-1984 above his juniors, subject to his suitability under Rules.

He shall be entitled to services benefits under Rules; however, he would be liable for payment of only 1/3rd of back wages, in view of delay in raising the present industrial dispute.

18. The reference under adjudication is answered accordingly.

19. Award as above.

Lucknow.
2nd July, 2015.

RAKESH KUMAR, Presiding Officer
नई दिल्ली, 14 जुलाई, 2015

का.आ. 1464.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट संदर्भ संख्या (34/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.07.2015 को प्राप्त हुआ था।

[सं एल-41011/103/2010-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th July, 2015

S.O. 1464.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 34/2011) of the Cen.Govt.Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 14.07.2015.

[No. L-41011/103/2010-IR(B-1)]

SUMATI SAKLANI, Section Officer
ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, LUCKNOW**

PRESENT

**RAKESH KUMAR
PRESIDING OFFICER**

I.D. NO. 34/2011

**REF. NO. L-41011/103/2010-IR(B-I) DATED:
14.03.2011**

BETWEEN

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kananora (Premwati Nagar)
PO - Manak Nagar
Lucknow - 16. (Espousing cause of Shri N.K. Mehta)

AND

Senior Divisional Railway Manager (Personnel)
Northern Railway, Hazratganj
Lucknow.

AWARD

1. By order No. L-41011/103/2010-IR(B-I) dated: 14.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kananora (Premwati Nagar), PO - Manak Nagar, Lucknow and Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"Whether the Demand of the Union regarding placement of Shri N.K. Mehta S/o Shri D.K. Mehta, assistant LOCO Pilot, LOCO-Shed, Lucknow in the Penal of 1983-84 above his juniors and grant of pay benefits accordingly is legal and justified? To what relief the union is entitled?"

The case of the workman's union, in brief, is that the workman, N.K. Mehta was appointed as cleaner *w.e.f.* 15.04.78 and worked as such till 03.09.1981 continuously, when he had been retrenched *w.e.f.* 04.09.1981 illegally. The workman challenged his retrenchment before CGIT-cum-Labour Court, Kanpur in I.D. No. 48/83 and 163/1983 and the Tribunal was pleased to reinstate the workman with back wages from the date of retrenchment *vide* their award dated 19.02.1987 and 25.11.1985. The management challenged the award of CGIT, Kanpur before Hon'ble High Court, which was rejected; likewise the SLP too before Hon'ble Apex Court was rejected; accordingly, the workman was reinstated on 04.08.1983. It is alleged that the management *vide* its order No. 220 E/1-5/Screening/Loco dated 30.08.1991 regularized the workman on the post of Loco Cleaner; whereas it absorbed other junior workmen in the panel for the year 1983-84 on the basis of 120 days working up to 30.09.1998, which is in violation to the provisions of Railway Rules. It is submitted by the workman's union that Shri Amarjeet Singh & Sri Abdul Aziz were also included in the panel for year 1992 but later on included in the panel of year 1983-84 on the orders of Hon'ble CAT, Lucknow. Likewise, other workmen *viz.* Sri Pratap Bahadur & Ahmad Ali, who were earlier included in panel for the year 1992 were included in the panel for year 83-84 as per order of this Tribunal. Accordingly, the workman's union has prayed that the name of the workman, N.K. Mehta be included in the panel of the year 83-84 with consequential benefits.

4. The management of the railways has filed its written statement, denying the claim of the workman's union and

has contended that the workman's union has sought the relief placing the name of the workman in the panel of year 1983-84, which is not permissible because of the seniority of other employees will be effected and they are not arrayed as party in present industrial dispute and if the relief is granted, several other workers may prefer the matter in courts since their seniority shall be affected. The management has specifically submitted that the industrial dispute has been referred after lapse of more than 25 years without any rhyme or reason or any sufficient explanation; and accordingly, the same is liable to be rejected on the point of limitation.

5. The workman's union has filed its rejoinder wherein apart from reiterating facts already mentioned in the statement claim has submitted that there is no limitation provided in the Industrial Disputes Act, 1947.

6. The parties filed documentary as well as oral evidence in support of their respective case and forwarded oral arguments.

7. Heard learned authorized representatives of the parties at length and perused entire evidence on record.

8. The authorized representative of the workman has contended that since the termination dated 04.09.1981 has been held illegal and the workman had been reinstated with consequential benefits, therefore he is entitled for inclusion in the panel of year 1983-1984. He has relied upon:

- (i) N. Balakrishnan vs. M. Krishnamurthy 1998 ACJ 1347.

9. In rebuttal, the authorized representative of the management has contended that the workman was screened and rightly placed in the seniority panel *vide* order dated 30.08.1991. The management has vehemently contended that the workman is not entitled to be included in the panel for the year 1983-84, inasmuch as the present industrial dispute is time barred and the workman has raised this industrial dispute when he found that some other workmen got benefit from different Court/Tribunals. The management has relied on:

- (i) M. Ramakotaiah & others vs. Union of India & others 2007 (6) AWC 6556 (SC).

10. I have given my thoughtful consideration to the rival contentions of the learned authorized representatives of the parties and scanned the entire evidence available on record.

11. Admittedly, the workman had been terminated *w.e.f.* 04.09.1981 and his termination had been declared to be illegal and was reinstated with back wages by the CGIT-cum-Labour Court, Kanpur. Also, the Hon'ble High Court in writ petition, filed by the management or railways, upheld the award regarding reinstatement and the management in compliance of award reinstated the workman and paid him back wages. However, the management's contention over

the issue referred to this Tribunal is, that the workman was screened and was rightly placed in the seniority panel for 1991 and he is not entitled for inclusion in the panel for year 1983 as he was not in service at that point of time; more so because the present industrial dispute has been raised after lapse of more than 25 years.

12. Thus, the question to be adjudicated is as to whether the workman is entitled to be included in the seniority panel of 83-84, which was denied to him, consequent upon his termination in the said year? It is admitted fact that the workman was not in service due to illegal termination in the relevant year 1983, when the seniority panel was drawn and his name was not considered. The termination of the workman was quashed by the CGIT-cum-Labour Court, Kanpur and in compliance thereof the management reinstated the workman, treating the termination as non-est and paid back wages in compliance of the order of the Hon'ble High Court.

As per award of the CGIT-cum-Labour Court, Kanpur, the reinstatement order was not qualified one to be given effect to the extent of monetary benefits only. As per settled procedure, logically and legally reinstatement required grant of all service benefits including seniority as if the termination had not taken place. The management complied with the order of reinstatement without giving seniority and released monetary benefits to the workman. On the quashing of termination order, it has to be assumed that the workman was never been terminated and continued to be in service notionally. The effect of the reinstatement is that the workman, N.K. Mehta would be deemed in service on the last post held on the date of termination. Accordingly, he is entitled for preference over his juniors and to be included in the seniority panel for the year 1983-1984.

13. The management of the railways has come up with a contention that the present industrial dispute is time barred as it has been raised after lapse of more than 25 years. The workman's witness during his cross-examination stated that he moved an application before DRM; but has not filed its copy before this Tribunal. He further, stated that when the management did not act upon his repeated representations, then he raised the present industrial dispute. The authorized representative has contended that the workman has not given any reliable explanation for inordinate delay of 25 years; rather he turned up when the other got successful. He stressed that the order of the Hon'ble CAT, Lucknow Bench, Lucknow in respect of Amarjeet Singh was delivered on 26.04.1993; but the workman has raised present industrial dispute in 2011, without any explanation.

14. The management has relied upon N. Balakrishnan vs. M. Krishnamurthy 1998 ACJ 1374; wherein Hon'ble Apex Court while dealing with the matter of delay has

observed that length of delay does not matter, acceptability of the explanation is the only criterion.

In Chennai Metropolitan Water Supply and Sewerage Board & other vs. T.T. Murali Babu 2014 (141) FLR 772, Honble Apex Court has observed as under:

"The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a Constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reasons, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring a hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the Court, yet the writ Court chose not to address the same. It is the duty of the Court to Scrutinize whether such enormous delay is to be ignored without any justification."

15. Further, in Dr. Jawahar Lal Rohatgi Memorial Eye Hospital Vs. State of U.P. & others 2013 (138) FLR 11 Hon'ble Allahabad High Court upholding the action of the State Government in denying the making reference of case after 22 years held that it is not expedient for State government to refer against order of termination dated 26.6.1982 being old and stale case, where the workman filed an application raising industrial dispute after 22 years in 2004. Hon'ble High Court observed that there is nothing to indicate as to why the workman could not approach the authority under the ID Act. On the issue of delay the workman has tried to explain his delay by pleading that he kept on making representations before the authorities; but in the absence of any copy thereof his contention cannot be relied upon. There is no other explanation about delay.

Thus, from the face of record it is crystal clear that the workman did not bother to approach the management or any legal forum for redressal of his grievances for more than 20 years; and he approached this Tribunal when he come to know about favourable order of courts in similar nature of cases, which points out towards opportunism of the workman. Moreover, the explanation forwarded by the workman's union before this Tribunal is insufficient.

16. In the present case, admittedly there is delay of approximately 20 years as he was screened *vide* order dated 30.08.1991. The workman's union failed to give any logical explanation for this inordinate delay of 20 years. Hon'ble Apex Court in Ajaib Singh Vs. Sirhind Co-operative Marketing-cum-Processing Services Society Ltd. & Another 1992 LAB IC 1435 where there was admitted delay of seven years has held that the Court can mould relief by refusing back wages or directing payment of part of back wages.

17. Thus, from the facts and circumstances of the case and the case laws cited hereinabove, I am of considered opinion that the action the management of Central Railway in not including the name of the workman in the panel for year 83-84 was illegal and unjustified. Accordingly, I come to the conclusion that the workman, Sri N.K. Mehta is entitled for placement in the panel of 1983-1984 above his juniors, subject to his suitability under Rules. He shall be entitled to services benefits under Rules; however, he would be liable for payment of only 1/3rd of back wages, in view of delay in raising the present industrial dispute.

18. The reference under adjudication is answered accordingly.

19. Award as above.

Lucknow.

02nd July, 2015.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 15 जुलाई, 2015

का.आ. 1465.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (47/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2015 को प्राप्त हुआ था।

[सं एल-12011/42/2012-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th July, 2015

S.O. 1465.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 47/2013) of the Cent.Govt.Indus. Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 15/7/2015.

[No. L-12011/42/2012 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, LUCKNOW****PRESENT**

RAKESH KUMAR,
PRESIDING OFFICER

I.D. NO. 47/2013**REF. NO. L-12011/42/2012-IR(B-II) DATED 28.05.2013****BETWEEN**

General Secretary
Central Bank Employees Congress (U.P.)
MIG-C 1241 Rajaji Puram
Lucknow

AND

The Regional Manager
Central Bank of India, Regional Office
Hazratganj
Lucknow (U.P.)

AWARD

1. By order No. L-12011/42/2012-IR(BII) dated 28.05.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between General Secretary, Central Bank Employees Congress, Lucknow and the Regional Manager, Central Bank of India, Regional Office, Lucknow for adjudication.

2. The reference under adjudication is:

"Kya Prabhandak Central Bank of India, Lucknow/Jhansi dwara Sri R.K. Sharma Ke 53 dino ka avkash ya hona na karan vetan vradhi aagey bara diya jana tatha uska vetan na dena nyayochit va vaidh hai? Yadi nahi to vadi kis rahat ko pane ka haqdar hai"

3. The order of reference was endorsed to the General Secretary, Central Bank Employees Congress (U.P.) Lucknow with the direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957.

4. The order of reference was registered in the Tribunal on 18.07.2013 and notice was issued for filing statement of claim by the workman.

5. The workman did not file statement of claim. Several dates *i.e.* 21.08.2013, 24.09.2013, 12.11.2013, 18.12.2013, 21.01.2014, 03.03.2014, 17.04.2014, 05.06.2014, 25.07.2014,

05.09.2014 and 10.11.2014 were fixed for filing statement of claim but parties did not turn up.

6. Under the circumstances and the facts mentioned herein, no relief is legally required to be given to the applicant/workman Sh. R.K. Sharma. The reference under adjudication is answered as No Claim Award.

7. Award as above.

Lucknow

15.12.2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 15 जुलाई, 2015

का.आ. 1466.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन में संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 81/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.07.2015 को प्राप्त हुआ था।

[सं एल-12012/29/2015-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th July, 2015

S.O. 1466.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2015) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 15.7.2015.

[No. L-12012/29/2015-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Monday, the 6th July, 2015

Present : **K.P. PRASANNA KUMARI,**
Presiding Officer

Industrial Dispute No. 81/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Central Bank of India and their workman)

BETWEEN

Smt. G. Nirmala : 1st Party/Petitioner

AND

The Sr. Regional Manager : 2nd Party/Respondent
Central Bank of India,
Regional Office
48/49, Montieth Road, Egmore
Chennai-600008

APPEARANCE

For the 1st Party/Petitioner : In Person

For the 2nd Party/Respondent : Absent

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12012/29/2015-IR(B-II) dated 22.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

1. The schedule mentioned in that order is:

"Whether the action of the management of Central Bank of India, Chennai regarding imposing the punishment of Compulsory Retirement on G. Nirmala is justified or not? If not, what relief the petitioner G. Nirmala is entitled to?"

2. On receipt of notice, the petitioner has appeared in person. The Respondent has not entered appearance.

3. The petitioner has filed ID 59/2015 before this Tribunal directly for redressal of her grievance. She has decided to proceed with the said matter. She has made endorsement to the effect that she is not pressing this ID.

Therefore the ID is disposed as not pressed. An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witness Examined:

For the 1st Party/Petitioner Union : None

For the 2nd Party/Management : None

Documents Marked:**On the petitioner's side**

Ex. No.	Date	Description
	Nil	

On the Management's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 15 जुलाई, 2015

का.आ. 1467.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ

इंडिया के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 80/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2015 को प्राप्त हुआ था।

[सं० एल-12012/30/2015-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी।

New Delhi, the 15th July, 2015

S.O. 1467.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 80/2015) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 15.7.2015.

[No. L-12012/30/2015-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 24th June, 2015

Present : K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 80/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Central Bank of India and their workman)

BETWEEN

Sri C. Sekar : 1st Party/Petitioner

AND

The Senior General Manager, : 2nd Party/Respondent
Central Bank of India,
Regional Office,
48/49, Montieth Road, Egmore
Chennai-600008

APPEARANCE

For the 1st Party/Petitioner : In Person

For the 2nd Party/Respondent : Set Ex-parte

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12012/30/2015-IR(B-II) dated 18.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

1. The schedule mentioned in that order is:

"Whether the action of the management of Central Bank of India, Chennai regarding the termination of the service of the petitioner Sri C. Sekar is justified or not? If not so, to what relief the petitioner C. Sekar is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 80/2015 and issued notices to both sides. The petitioner has appeared in person. The Respondent did not enter appearance.

3. On appearance, the petitioner has filed a memo stating that he has moved this Tribunal directly for redressal of his grievance and the same has been numbered as ID 22/2015 and is pending. He does not want to press this ID in the circumstances.

4. In view of the memo filed by the petitioner the ID is closed as not pressed. An Award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witness Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
	Nil	

On the Management's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 15 जुलाई, 2015

का.आ. 1468.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 3/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/07/2015 को प्राप्त हुआ था।

[सं एल-12012/94/2013-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th July, 2015

S.O. 1468.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2014) of the Central Government Industrial Tribunal-cum-Labour

Court, Chennai now as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workman, received by the Central Government on 15/07/2015.

[No. L-12012/94/2013-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 10th June, 2015

Present : K.P. PRASANNA KUMARI,

Presiding Officer

Industrial Dispute No. 3/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Overseas Bank, Chennai and their workman)

BETWEEN

Shri P. Sasi Kumar : 1st Party/Petitioner

AND

The Deputy General Manager, : 2nd Party/Respondent
Indian Overseas Bank,
Central Office,
No. 763, Anna Salai
Chennai-600021

APPEARANCES:

For the 1st Party/Petitioner : M/s T. Ramkumar, C.D.
Sugumar, Advocates

For the 2nd Party/Respondent : M/s T.S. Gopalan & Co.,
Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/94/2013-IR(B-II) dated 16.12.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Indian Overseas Bank, Chennai in imposing the punishment of Discharge from service of Shri P. Sasikumar, Clerk/Cashier is legal and justified? What relief the concerned workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 3/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and filed claim and counter statement respectively.

The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement in brief are these:

The petitioner joined the service of the Respondent Bank on 30.10.2000. He had been discharging his duties in a sincere and diligent manner. When the petitioner was dismissed from service he was engaged in the Arni branch of the Respondent Bank. The petitioner had married Kanmani. Misunderstanding developed between the petitioner and his wife after a year of the marriage. The petitioner's wife allegedly lodged a complaint with the Banking Ombudsman making false allegations against the petitioner. Without verifying the genuineness of the complaint the Respondent initiated disciplinary action against the petitioner. The petitioner was placed on suspension alleging that he had committed certain acts of commission and omission prejudicial to the interest of the Bank. Thereafter the Respondent issued a Charge Memo dated 27.10.2011 making false and frivolous allegations against the petitioner. The charges is said to be based on the complaint said to have been given by the wife of the petitioner. The charge sheet does not contain the details as to on what basis of the Management alleged that the petitioner forged the signature of his wife in the loan application, loan documents, authorization letter, etc. The charges are based on assumptions and surmises. A domestic enquiry was conducted against the petitioner based on the charges. Enquiry proceedings were vitiated by bias and violation of principles of natural justice. The statement of the petitioner's wife was not obtained during the preliminary enquiry. She was not made available for examination also. The petitioner was not involved in any misconduct as alleged in the charge memo. The Enquiry Officer entered a finding that the charges are proved. On the basis of this the petitioner was dismissed from service by order dated 31.10.2012. Though the petitioner preferred an appeal against the said order the same was dismissed. The dismissal of the petitioner from service is without any justification. An award may be passed holding that the action of the Respondent in terminating the service of the petitioner is unjustified, and directing the Respondent to reinstate the petitioner in service with full back wages, continuity of service and other attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

As both Respondents are representing the Indian Overseas Bank they are collectively referred to as "Respondent" and a common counter statement is filed. The Respondent used to sanction various types of loans including Jewel Loan. When a Jewel loan is advanced for agricultural purpose, it cannot be used for any other purpose. In March 2011 the Respondents Regional Office at Vellore received a complaint dated 26.02.2011 from one

Mrs. Kanmani complaining that she was married to the petitioner on 06.08.2009, that she was given gold jewels by way of dowry at the time of marriage, that within a month of marriage the petitioner had compulsorily took away the jewels, that she had misunderstanding with the petitioner and she was living with her parents from 19.09.2009 and that the petitioner had taken two jewel loans in her name without her knowledge and forging her signature. An investigation was made and it transpired that out of the loan of Rs. 1.5 lakhs availed on 31.08.2009, Rs. 29,790/- was utilized to the current deposit and cash credit of the petitioner and another Rs. 73,539/- was credited to the loan account of Uma Maheshwari. The loan was redeemed on 12.11.2009 purported to be based on the authorization given by the wife of the petitioner. On 21.10.2009 the petitioner had obtained agricultural loan of Rs. 1.03 lakhs pledging jewels of his wife, Kanmani. The loan disbursing voucher was prepared by him in his own handwriting. On redemption the jewels were handed over to the petitioner based on the authorization letter purportedly signed by Kanmani. The loan application for the loan was not traceable. The redemption voucher also was missing. Based on the above irregularities a Charge Sheet was issued to the petitioner. Three witnesses were examined and 23 documents were exhibited in the enquiry that followed. The Enquiry Officer gave a report holding that all the three charges against the petitioner are proved. The petitioner was given a personal hearing. After considering his representation the punishment of dismissal was awarded to the petitioner. The allegation in the Claim Statement that the enquiry was not conducted in accordance with the principles of natural justice is not correct.

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating his case in the Claim Statement.

6. The issue raised by the petitioner regarding fairness of the enquiry was considered as a preliminary issue and a finding was entered to the effect that the enquiry was conducted in a fair and proper manner.

7. The evidence in the case consists of oral evidence WW1 and documents marked as Ext.W1 to Ext.W3 and Ext.M1 to Ext.M44.

8. The points for consideration are:

- (i) Whether the action of the Respondent in imposing the punishment of discharge from service on the petitioner is legal and justified?
- (ii) What is the relief to which the petitioner is entitled?

The Points

9. The petitioner entered the service of the Respondent in the year 2000 on compassionate grounds consequent to the death of his father. He had been working as Clerk/

Cashier at Arni Branch of the Respondent Bank at the time of his dismissal from service.

10. Investigation was conducted against the petitioner based on complaints that were allegedly given by Kanmani, wife of the petitioner in the year 2011 alleging that she had become estranged from the petitioner, her husband within a year of the marriage that has taken place on 06.08.2009, that the petitioner had forcibly taken away the jewels belonging to her and had pledged them at the branch in which he is working itself as if it is done by her, by forging her signature. Based on the investigation report, Ext.W2-Charge memo was issued to the petitioner. The charges run as below:

- I. 1. You had obtained agricultural jewel loan no. 740900278 for Rs. 1,50,000/- in the name of Mrs. Kanmani by pledging the jewels of which you are not the true owner. Kanmani had denied availment of the loan and obtaining of the loan proceeds in cash. You had obtained the loan by forging Kanmani's signature in the application form and the loan disbursement debit voucher.
2. You had received the AJL proceeds in cash colluding with Mr. K.N. Selvaraj, Clerk/Shroff by forging the signature of Kanmani in the debit voucher of Rs. 1,50,000/- on the same day, with the loan proceeds fraudulently received by you, you had credited Rs. 29,461/- in cash to your CDCC account no. 125 and in the reverse of this voucher you had indicated adjustments made with regard to Rs. 1,50,000/- in your own handwriting. An amount of Rs. 72539/- was credited to the AJL account held in the name of Uma Maheshwari, daughter of Selvaraj, the staff member mentioned above. You had deliberately not marked the disposal of balance Rs. 48,000/-. You had obtained AJL proceedings by forging the signature of Kanmani.
3. On 12.11.2009 on redemption of the above loan the pledged jewels were handed over to you on the basis of authorization letter submitted by you and purported to be signed by Kanmani. You had forged the signature of Kanmani in the authorization letter and received the pledged jewels not belonging to you.
4. You had destroyed the bank records, loan application, authorization letter from Kanmani, cash scroll print out and the related redemption voucher dated 12.11.2009 to suppress the fraud committed by you.
- II. 1. You had obtained agricultural jewel loan no. 740900381 for Rs. 1,30,000/- in the name of Mrs. Kanmani by pledging the jewels of which you are not the true owner. Kanmani had denied availment

of the loan and obtaining the proceeds in cash. You had obtained the loan by forging Kanmani's signature in the application form and the loan disbursement debit voucher.

2. On 22.02.2010, on redemption of the loan the jewels were handed over to you on the basis of authorization letter submitted by you and duly signed by Kanmani. You had forged the signature of Kanmani in the authorization letter and received the pledged jewels.
3. You had destroyed the bank records, loan application, authorization letter from Kanmani, Cash Scroll Printout and the related redemption voucher dated 22.02.2010 to suppress the fraud committed by you.
- III. 1. You had obtained agricultural jewel loan no. 740900401 for Rs. 85,000/- in the name of Mrs. Kanmani by pledging the jewels of which you are not true owner. You had obtained the loan by forging Kanmani's signature in the application form and the loan disbursement debit voucher.
2. On 06.03.2010 on redemption of the loan the pledged jewels were handed over to you on the basis of authorization letter submitted by you and signed by Kanmani. You had forged the signature of Kanmani in the authorization letter and received the pledged jewels.
3. You had destroyed the bank records, loan application, authorization letter from Kanmani, Cash Scroll Printout and the related redemption voucher dated 06.03.2010 to suppress the fraud committed by you.
- IV. 1. You had obtained AJL No. 740900478 for Rs. 1,00,000/- in the name of Mrs. Kanmani by pledging the jewels of which you are not the true owner. Kanmani had denied to have availed the loan or obtained the loan proceeds. You had obtained the loan by forging Kanmani's signature in the application form and in the loan disbursement debit voucher.
2. On 22.02.2010, on redemption of the loan the pledged jewels were handed over to you on the basis of authorization letter from Kanmani and submitted by you. You had forged the signature of Mrs. Kanmani in the authorization letter and received the pledged jewels.
3. You had destroyed the bank records, loan application, authorization letter from Kanmani, Cash scroll printout and the related redemption voucher dated 22.02.2010 to suppress the fraud committed by you.

The charge memo proceeds to state that the petitioner had caused damage to the property of the bank and thereby committed gross misconduct within Clause-5b of the Memorandum of Settlement dated 10.12.2002 and he had acted prejudicial to the interests of the bank within the meaning of gross misconduct as defined in Clause-5j of the aforesaid Memorandum of Settlement.

11. Two complaints purportedly written by Kanmani, wife of the petitioner are marked as Ext.M34 and Ext.M35. English translation of these two documents which is in Tamil have been furnished to me. Ext.M34 a letter dated 26.02.2011 said to have been received by Banking Ombudsman has been sent to Consumer Grievance Redressal Service Centre at Chennai and has been forwarded to the Respondent Bank for investigation. The letter states that within a month of the marriage the petitioner had taken away jewels given to his wife at the time of marriage. It is further stated that because of the ill-treatment from the petitioner and due to difference of opinion with him she got separated on 19.09.2009 and had been living with her parents from that date. The letter refers to two loans, loan account No. 740900278 and loan account No. 740900381. It is stated that the petitioner had pledged jewels belonging to her and had taken loans, that has not visited till date the branch of the Bank where the petitioner was working. The petitioner is alleged to have forged the signatures and collected the money. By Ext. M35 in which the date is given as 04.10.2011, which according to the Respondent must be 04.11.2011 the author of the letter requested the Zonal Manager to make an enquiry and take appropriate action against the petitioner.

12. It is on the basis of the complaint allegedly given by Kanmani investigation has been conducted, a report was prepared and proceedings had been initiated against the petitioner for the misdeeds allegedly committed by him. it could be seen from the charge memo that the allegation against the petitioner is that he had availed four loans in the name of his wife Kanmani, all by forging the signatures of Kanmani using the jewels that were forcibly taken away from her. All the loans were redeemed and the jewels are said to have been handed over to the petitioner on the basis of the Authorization letters purportedly given by his wife but actually forged by him. The documents pertaining to the loans are said to be missing from the branch and this is also attributed to the petitioner.

13. In the enquiry proceedings the Management had examined three witnesses and marked 23 documents. MW1 and MW2 are the officers who investigated the matter and MW3 is the Senior Manager of the Arni branch at the time of the enquiry proceedings. The report of MW1 who conducted the investigation was marked through him. The preliminary report prepared by MW2 was marked through him also. MW3 was the Senior Manager of the Arni branch since 24.08.2010. He was not working in the Branch at the time when concerned loans were availed by the petitioner by foregery.

14. On going through the enquiry proceedings it seems that MW1 had questioned the staff of the Arni branch during his investigation. The entire evidence is on the basis of the statement purportedly given by the staff. However, none of the staff who had anything to do with the four transactions are examined during the enquiry proceedings. The Management had also produced documents in its attempt to prove that the loan proceeds were not actually handed over to Kanmani, the wife of the petitioner but the entire loan proceeds were misutilized by the petitioner by different methods. It is stated that some of the loan proceeds were credited to other accounts including that of himself, that there is no evidence of his wife having received the amount in cash at all.

15. It could be seen on going through the enquiry proceedings that the entire case of the Management is a castle built with sand as foundation and the same is bound to tumble down. The case is entirely based on the complaint allegedly made by Kanmani, wife of the petitioner. She is not examined. She was not even questioned by MW1 or MW2. They have treated the complaint as a genuine one and proceeded on the basis that the complaint should have been made by Kanmani alone. Referring to non-examination of Kanmani, the counsel for the Respondent has tried to justify the stand of the Respondent stating that the petitioner has admitted in the Claim Statement that the complaint was actually written by Kanmani herself. However, this is not so. On going through the Claim Statement it could be seen that the petitioner has taken care to dispute the genuineness of the complaint. The counsel for the Respondent has been referring to the statement in the Claim Statement that the petitioner's wife had allegedly lodged a complaint with the Banking Ombudsman containing false and frivolous allegations. The word "allegedly" used in the Claim Statement itself would show that the genuineness of the complaint is not admitted by the petitioner. In the grounds for the Claim Statement the petitioner has repeated that the charge memo was issued "based on a complaint allegedly given by his wife and without making any verification regarding nature and genuineness of the said complaint".

16. The only person who could have stated anything about the genuineness of the complaint is the estranged wife of the petitioner. The loans are seen availed in the year 2009. The complaint was made only in 2011. One does not know what was the reason for the delay in making the complaint even though loans might have been availed at a time when wife was staying with the petitioner. If the complaint is believed she was with the petitioner for a year after the marriage. The non-examination of the complainant affected the very foundation of the case of the Management.

17. Even otherwise the Respondent has miserably failed in proving the charges against the petitioner. As already pointed out none of the persons who might have

anything to do with the transactions are examined. It is not the case of the Respondent that it is the petitioner himself who has been dealing with the loan application, sanctioning the loan, handing over the loan proceeds, etc. the attempt of the respondent had been to prove the statement purportedly made by other staff of the bank through MW1 who investigated the matter. The statements allegedly made by the staff of the bank before MW1 are available in the enquiry proceedings. A look at the statements would show the fallacy of the case of the Respondent. The statements of Selvaraj, a staff of the bank the wife of whose account a portion of the money availed as loan was credited is found alongwith Ext.M43, the investigation report at Page-202. The statement is recorded in first person but in the words of third person. What this person has stated to MW1 is that on 31.08.2009 on which date one loan was availed he was the Cashier and that he had not issued token to Kanmani as she was the wife of a staff. It is further stated that since the amount was paid in round figure he had not put denomination but he made payment to Kanmani only. On 21.10.2009 the date on which another loan was availed Chinnapaiyyan was the Cashier. This person also seems to have stated that since the loanee was the wife of a staff no token was issued but the amount was paid to the loanee. Shivakumar, the appraiser of the bank has told MW1 that he will process jewel loans only to parties who came to the Bank. He seems to have stated that he weighed the jewels in the persence of borrower Kanmani and obtained signature of Kanmani in the concerned documents. Adimoolan who was the Senior Manager seems to have stated that two jewel loans were granted at the request of petitioner in the name of his wife. These two jewel loans are probably those referred to in the complaint. There is no reference to other loans. He had stated that while redemption of the loans jewels were handed over to petitioner after getting due authorization letter from Kanmani. There is a further statment from him that on delivery of jewels on 12.11.2009 many persons from Kanmani's side had been to the bank. The above statements would indicated that none of the staff had got a case that Kanmani did not come to the Bank at all in connection with loans and everything was dealt with by the petitioner based on the forged application and other documents.

18. The basis for the investigation report is that signature purportedly that of Kanmani in the loan applications, vouchers, etc. differ from her signature in the complaint. As already stated the complaint itself is not proved in the absence of the examination of the complainant. There was no material for the Investigation Officer to come to a conclusion that the signature in the loan application and other connected documents are forged ones and the signature in the complaint alone is the genuine one. The Enquiry Officer has accepted the entire investigation report which could not be a basis for a finding at all in the absence of the same having been confirmed through the evidence of the connected witnesses.

19. There is no evidence to show that the complaint was made by Kanmani. There is no evidence to show that the signature in the loan applications and other documents were forged by the petitioner. There is no evidence to show that he utilized the loan amount by himself. There is nothing to show that the jewels were received by him.

20. There is no evidence to put responsibility on the petitioner for the missing documents also. Nobody has stated that he is the custodian of the documents. No one has stated that he has done something to remove the documents from the custody of the bank. Lastly there is nothing to show that the petitioner has done anything to cause any damage to the property of the bank or to any of its customers or acted in any way prejudicial to the interests of the bank. I find that the enquiry report has no legs to stand and the dismissal (it is dismissal and not discharge as given in the schedule) of the petitioner on the basis of such report is illegal and unjustified. The petitioner is entitled to be reinstated in service. Considering the circumstances, the petitioner will be entitled to 75% back wages.

Accordingly the Respondent is directed to reinstate the petitioner in service with 75% back wages, continuity of service and other attendant benefits within one month of the award. The petitioner will be entitled to interest at the rate of 9% per annum on the back wages payable, if not paid within a month of the award. An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri P. Sasikumar

For the 2nd Party/Management : None

Documents Marked:

on the petitioner's side

Ex.No.	Date	Description
Ex. W1	15.06.2011	Order of Suspension issued to the petitioner/workman
Ex. W2	27.10.2011	Charge Sheet issued to the petitioner/workman
Ex. W3	31.10.2012	Order of dismissal issued to the petitioner/workman

On the Management's side

Ex. M1	27.02.2012	Notice of enquiry issued to the petitioner - Ref. C/CDAC/EO/7077/2012 - Enquiry at Arani Branch on 21.03.2012 - 11.30 hrs.
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Ex. No.	Date	Description	Ex. No.	Date	Description
Ex. M2	20.03.2012	Letter from petitioner to Enquiry office enclosing medical certificate	Ex. M14	13.12.2012	Letter from petitioner to Disciplinary Authority stating he will appear against the order and requesting personal hearing
Ex. M3	21.03.2012 15.05.2015	Enquiry Proceedings			
Ex. M4	21.03.2012	Letter from Enquiry Officer forwarding copy of enquiry proceedings on 21.03.2012 and giving opportunity to the petitioner to cross-examine the witness and present his case-posting next hearing to 15.05.2012.	Ex. M15	23.01.2013	Letter from Appellate Authority in reply to petitioner's letter dated 13.12.2012 fixing personal hearing on 25.02.2013
			Ex. M16	25.02.2013	Proceedings of personal hearing by the Appellate Authority
Ex. M5	01.06.2012 30.05.2012	Letter from Enquiry Officer to Petitioner enclosing Presenting Officer's brief dated 30.05.2012	Ex. M17	25.02.2013	Appeal and submission of petitioner to the Appellate Authority submitted during the personal hearing
Ex. M6	04.06.2012	Letter from Enquiry Officer to Petitioner enclosing Presenting Officer's brief and calling for defence brief	Ex. M18	26.04.2013	Order of Appellate Authority confirming the order of Disciplinary Authority
Ex. M7	26.07.2012	Letter from Enquiry Officer to Petitioner enclosing enquiry findings dated 26.07.2012 calling for his representation	Ex. M19	26.06.2013	2A Petition filed by the petitioner before ALC(C), Chennai
Ex. M8	08.08.2012	Letter from Lakshminarayanan, Defence Representative (Deputy General Secretary-Union) to Disciplinary Authority submitting his Defence Proof	Ex. M20	29.08.2013	Reply by the Respondent before ALC (C), Puducherry
			Ex. M21	12.09.2013	Conciliation failure report by ALC (C), Puducherry
Ex. M9	13.09.2012	Letter from Disciplinary Authority to petitioner proposing punishment of dismissal and fixing personal hearing on 03.10.2012	Ex. M22	-	Attendance Register for the period from August 2009 to March 2010-except Dec. 09 and January 10
			Ex. M23	-	Biodata of Sri P. Sasikumar
Ex. M10	24.09.2012	Letter from petitioner to the Disciplinary Authority requesting 30 days time for appearing before the Authority for personal hearing	Ex. M24	-	Complaint letter dated 26.02.2011 of Mrs. P. Kanmani wife of Sri P. Sasikumar through Office of the Banking Ombudsman along with covering letters from Customer
Ex. M11	24.09.2012	Reply of Disciplinary Authority to Petitioner to letter dated 24.09.2012 requesting 30 days time by the petitioner-posting personal hearing on 19.10.2012	Ex. M25	-	Complaint letter dated 04.10.2011 of Mrs. P. Kanmani addressed to RO, Vellore
Ex. M12	19.10.2012	Proceedings of personal hearing	Ex. M26	-	Master printout record of Agri Jewel Loan No. 740900278 dated 31.08.2009 for Rs. 1,50,000/- in the name of P. Kanmani (4 pages)
Ex. M13	19.10.2012	Letter of petitioner by way of reply to the 2nd Show Cause Notice dated 27.10.2011 submitted during personal hearing	Ex. M27	-	AJL Application No. 740900180 dated 23.07.2009 for Rs. 72,000/- of K.S. Uma Maheswari with

Ex. No.	Date	Description
		related Jewel Loan Card No. 731399 dated 23.07.2009
Ex. M28	-	Debit Cash Voucher dated 31.08.2009 for Rs. 1,50,000/- pertaining to AJL 740900278
Ex. M29	-	Cash receipt of Rs. 29,461/- and Rs. 28,000/- dated 31.08.2009 to the credit of CC No. 125 of Sri P. Sasikumar
Ex. M30	-	Cash receipt dated 31.08.2009 for Rs. 72539/- to the credit of Mrs. K.S. Uma Maheswari D/o Sri K.N. Selvaraj for AJL 740900180
Ex. M31	-	Master Print out record of Agri Jewel Loan account No. 740900381 dated 21.10.2009 for Rs. 1,30,000/- in the name of Mr. Kanmani (bearing the address of Mr. P. Sasikumar)
Ex. M32	-	Master print out of AJL No. No. 740900401 and No. 740900478 mentioning the address of Mrs. Kanmani as 5, Bestha Street, Arani
Ex. M33	-	Debit Cash Voucher dated 21.10.2009 for Rs. 1,30,000/- AJL No. No. 740900381
Ex. M34	-	Debit Cash Voucher dated 27.10.2009 for Rs. 85,000/- AJL No. No. 740900401
Ex. M35	-	Lot entry dated 22.02.2010-range of lot from 139 to 142
Ex. M36	-	Lot entry dated 12.11.2009-range of lot No. 147 to 149 and 180
Ex. M37	-	Lot entry dated 21.10.2009-lot No. 145
Ex. M38	-	Lot entry dated 31.08.2009-lot No. 46, 213, 225
Ex. M39	-	Lot entry dated 27.10.2009-lot No. 157
Ex. M40	-	Lot entry dated 06.03.2010-lot No. 210, 170
Ex. M41	-	Lot entry dated 06.03.2010-lot No. 147
Ex. M42	-	Advances supplementary dated 12.11.2009, 06.03.2010, 22.02.2010

Ex. No.	Date	Description
Ex. M43	-	Investigation Report dated 03.06.2011 along with enclosures of Sri S. Vaidyanathan Roll No. 30205 Senior Manager II Line. Ranipet Industrial Complex Branch
Ex. M44	-	Investigation Report dated 16.05.2011 along with with Flash report and enclosures of Sri M.R. Nachiappan Roll. N. 32495 Sr. Manager, RO Vellore

नई दिल्ली, 15 जुलाई, 2015

कांआ 1469.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर में पंचाट (54/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.07.2015 को प्राप्त हुआ था।

[सं एल-12012/66/2013-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th July, 2015

S.O. 1469.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 54/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Jaipur as show in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 15.7.2015.

[No. L-12012/66/2013-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 54/2013

Reference No. L-12012/66/2013-IR (B-II) dated: 17.10.2013

Smt. Meena
D/o Pralad Ji, Harijan caste,
R/o Plot No. 1, New Sabarmati Colony,
Kota (Rajasthan)
V/s

The Dist. Coordinator
Office of Dist. Coordinator
Punjab National Bank
Aerodrum, Kota (Rajasthan)

AWARD

14.10.2014

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

“क्या अप्रार्थी प्रबंधक द्वारा प्रार्थिया श्रीमती मीना को स्थायी रूप से अंशकालीन सफाई कर्मचारी पर नियुक्ति नहीं देने की कार्यवाही वैध एवं न्यायोचित है? यदि नहीं, तो प्रार्थिया किस राहत की व कब से पाने की हकदार है?”

2. After receipt of reference notices were sent to the parties & both the parties have been served. On 17.2.2014 on behalf of applicant Smt. Meena authority was filed in name of two learned advocate Sh. Vijay Chaudhary & Sh. Amit Kumar Jain.

3. From perusal of the order sheet it appears that on 17.2.2014 applicant Smt. Meena was personally present with her learned advocate Sh. Amit Kumar Jain & time was sought for filing statement of claim which was accepted & more than three month time was given for filing statement of claim on 19.5.2014. On 17.2.2014 none was present on behalf of opposite party. On next date 19.5.2014 both the parties were absent, statement of claim was not filed & Presiding Officer was on leave. 21.7.2014 was next date fixed for filing statement of claim. On 21.7.2014 none was present from both side. Learned advocates were on strike hence, 20.8.2014 was fixed for filing statement of claim. On 20.8.2014 both the parties were absent, learned advocates were on strike. The Presiding Officer was on leave hence, 13.10.2014 was fixed for filing statement of claim. On 13.10.2014 also none appeared on behalf of both the parties & statement of claim was also not filed, hence, further extension of opportunity for filing statement of claim was closed & case was reserved for passing "No Claim Award".

4. It is pertinent to note that *vide* Labour Ministry's order dated 17.10.2013 applicant was directed to file statement of claim with complete relevant documents & list of witnesses with the tribunal within 15 days from the receipt of above order of reference forwarding the copy of statement of claim to each of the opposite parties involved in this dispute but applicant failed to file statement of claim in compliance of that order also. In above fact & circumstances, it is clear that beside the order of the labour Ministry notices sent by tribunal also have failed to initiate the applicant for submitting the statement of claim.

5. Applicant has neither filed statement of claim on the direction of Ministry nor on receipt of notice sent by the

tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the above circumstances & in the absence of material brought on record it is not possible to adjudicate the reference under consideration, therefore, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 15 जुलाई, 2015

का०आ० 1470.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (59/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.07.2015 को प्राप्त हुआ था।

[सं० एल-12012/55/2011-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th July, 2015

S.O. 1470.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 59/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 15/7/2015.

[No. L-12012/55/2011-IR (B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri Pradeep Kumar,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 59/2011

L-12012/55/2011-IR (B-II), dated 11.11.2011

Date of Passing Award—31st Day of Decmeber, 2014

Between:

The Sr. Manager,	
Allahabad Bank, Sunabeda Branch,	
PO- Sunabeda,1st Party
Dist-Koraput, Odisha	Management

(And)

Shri Srikant Pradhan,
S/o Niranjana Pradhan,
At-AEF Market, PO/
P.S.-Sunabeda,
Dist-Koraput, Odisha

....2nd Party-Workman

Appearances:

1. NoneFor the 1st Party-
Management
2. Shri Srikant PradhanFor the 2nd Party-
Workman

AWARD

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employer in relation to the Management of Allahabad Bank, Sunabeda Branch, Koraput, Odisha, and their workmen Shri Srikant Pradhan in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act *vide* their Letter No. L-12012/55/2011-IR (B-II), dated 11.11.2011 to this Tribunal for adjudication. The dispute as referred to has been mentioned under the schedule of the order of reference which is quoted below:

“Whether the action of the Allahabad Bank, Sunabeda, Dist-Koraput in terminating the services of Shri Srikant Pradhan, Ex-Part Time Sweeper/Messenger of Allahabad Bank, College Extension Counter, Semiliguda, Dist. Koraput *w.e.f.* 11.08.2008, ignoring the provisions of Industrial Disputes Act, 1947 is justified? What relief the workman is entitled?”

2. The 2nd party workman (hereinafter referred to as "the 2nd party") has filed his Statement of Claim and rejoinder detailing therewith the illegality committed on behalf of the 1st party management (hereinafter referred to as "the 1st party") in terminating the services of the 2nd party. As per the guidelines dated 10.11.2003 issued by the Head Office of the 1st Party, the application of the 2nd party was considered and he was engaged as a part time sweeper during September, 2004 with a wage of Rs. 20/- per day. The 2nd party was receiving his wages by signing the debit vouchers. The 2nd party was performing the duties of maintaining/updating the cash scroll, Cash Books, Local Cheque Books and Out Station Cheque Books of the 1st party. During September, 2006, a burglary took place in the 1st party bank for which the local police have recorded the statements of the 2nd party along with other officials of the 1st party under S.D.J.M, Koraput, Odisha.

3. The 2nd party was working under the direct control of the 1st party. Hence, the employer-employee relationship was existing between the 1st party and the 2nd party. The 2nd party also pleaded that he had worked continuously under the 1st party and worked for more than 240 days during the preceding calendar year of his termination by the 1st party. Hence, Section 25-B of the Industrial Disputes

Act, 1947 (hereinafter referred to as "the Act") is applicable to him. To establish the above fact, the 2nd party relied upon the experience certificate issued to him by the 1st party on 25.07.2008.

4. On being instructed by the Sr. Manager, Allahabad Bank, Sunabeda, the 1st party floated an advertisement for the engagement of one part time sweeper on 1/3rd wage scale without considering his case. To put forth his candidature, the 1st party made application for the said post. But, he could not succeed in the interview held on 09.08.2008 in the premises of the 1st party which resulted in the disengagement of the 2nd party with effect from 11.08.2008. The 2nd party has further urged that he has completed more than 240 days of service to the 1st party preceding the date of his disengagement by the 1st party, that is 11.08.2008 and the 1st party without complying the provisions of Section 25-F of the Act, unceremoniously terminated his services and engaged a new person Shri Narasingha Jani in violation of Section 25-H of the Act.

5. The 2nd party pleaded that, he is not gainfully employed after his illegal retrenchment and striving hard to sustain his livelihood by doing part time business. Accordingly, the 2nd party prayed for passing an award declaring his termination of by the 1st party is illegal & unjustified, his reinstatement with full back wages and continuity of service with all consequential benefits.

6. The 1st Party on the other hand in his written statement denied the statements made by the 2nd party in his statement of claim. The 1st party has contended that, the 2nd party was never been engaged as a part time sweeper-cum-messenger. On 27.03.2007, the 1st party has sanctioned an amount of Rs.50,000/- in favour of the 2nd party under SJSRY scheme which is admissible only for the unemployed persons/youths.

7. The 1st party also cited two reasons for non selection of the 2nd party in the interview held on 09.08.2008. The first reason was that, the 2nd party had no valid employment exchange registration card and second was due to the fact that the post was reserved for Scheduled Tribe candidates only. The 1st party pleaded that the 2nd party was never an workman in the bank and the statement of the 2nd party of completing more than 240 days of services to the bank is false and baseless. Accordingly, the 1st party prayed for dismissal of the claim of the 2nd party.

8. Since, the 1st party remained absent in the proceedings of the case, he was set *ex parte* on 17.06.2013 and the case was fixed for *ex parte* evidence of the 2nd party without the settlement of issues. The 2nd party filed affidavit of his *ex parte* evidence and submitted certain documents in support of his case. Later on, in order to give an opportunity to the 1st party, notice was issued to the 1st party on 11.09.2014 for participating in the argument. But, the same had little consequence. Finally, I have heard oral arguments from the side of the 2nd party.

FINDINGS

9. As per the evidence and documents filed by the 2nd party, it is observed that the 2nd party was an employee of the 1st party since 2004. When the 1st party floated advertisement for engagement of a party time sweeper-cum-messenger during 2008 without considering his candidature, the 2nd party was forced to apply for the same with a hope to get a chance of his continued employment under the 1st party. The 1st party also considered the application of the 2nd party and called him for the interview held on 09.08.2008. This shows that the averments made by the 1st party in its written statement about reservation of the post for the Scheduled Tribe candidates only and that the 2nd party had no valid employment exchange registration card is false. In view of the same, the stand taken by the 1st party in his written statement cannot be believed. The 2nd party also could not sufficiently prove the fact of his continuous employment under the 1st party for more than 240 days in the last 12 months preceding the date of his termination, that is 11.08.2008.

10. Since, the 2nd party was an employee of the 1st party for more than one year till the date of termination of his services, that is, 11.08.2008, the termination of services of the 2nd party amounts to retrenchment. Accordingly, the action taken by the 1st party in terminating the services of the 2nd party without complying the provisions laid down under Section 25-F of the Industrial Disputes Act, 1947 is not justified.

11. The 1st party is hereby ordered to restore the previous engagement of the 2nd party immediately and pay 25% of the back wages to the 2nd party from the date of his termination till the date of restoration of his services. The 1st party shall pay the back wages within a period of 3 (three) months from the date of publication of award in the Gazette of India failing which the 1st party will be charged interest @ 12% per annum simple interest on the back wages.

12. Accordingly, this award is passed ex parte against the 1st party management.

Dictated and corrected by me.

PRADEEP KUMAR, Presiding Officer

नई दिल्ली, 15 जुलाई, 2015

का०आ० 1471. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (24/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.07.2015 को प्राप्त हुआ था।

[सं० एल-12011/48/2008-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th July, 2015

S.O. 1471.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 24/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Dena Bank and their workmen, received by the Central Government on 15/7/2015.

[No. L-12011/48/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

अनुबन्ध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर
सी०जी०आई०टी० प्रकरण सं० 24/2008

भरत पाण्डेय,

पीठासीन अधिकारी

रेफरेन्स नं० -12011/48/2008-IR (B-II) दिनांक 30/06/2008

The Legal Secretary,

Rajasthan Pradesh Bank Workers Organisation,

C-13, Ojhaji ka Bagh, Gandhi Nagar Mod

Jaipur

V/s

1. The General Manager,

Dena bank,

Regional Office, Bank of Baroda Building;

16, Sansad Marg,

New Delhi-110001

प्रार्थी की तरफ से : श्री आर० सी० जैन-प्रतिनिधि

अप्रार्थी की तरफ से : श्री एम०एम० पालीवाल-एडवोकेट

:पंचाट:

दिनांक : 6.12.2014

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 30.06.2008 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है:

2. "Whether the action of the management of Dena Bank through Dy. General Manager, Regional Office, New Delhi in not giving the benefit of proportionate wages of scale and status of sub-staff to Shri Pradeep Saharia, PTS despite his more than 7 years of continuous service is justified? If not, what relief the workman is entitled to?"

3. स्टेटमेन्ट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्ततः प्रार्थी श्री प्रदीप सहारिया का कथन है कि वह विपक्षी बैंक में सब-स्टाफ के रूप में दिनांक 12.10.2000 से कार्यरत है। प्रार्थी श्री प्रदीप सहारिया से सब-स्टाफ के सभी कार्य लिये जा रहे हैं लेकिन अभी तक उसे अंशकालीन सफाई कर्मचारी का पद नहीं दिया गया है। विपक्षी संस्थान एक राष्ट्रीयकृत बैंक है जिस पर कर्मचारियों की सेवा शर्तें शास्त्री अवार्ड,

देसाई अवार्ड तथा इंडियन बैंक्स एसोसियेशन व बैंक कर्मचारियों के संगठनों के बीच सम्पन्न द्विपक्षीय समझौते के अनुसार निर्धारित की जाती है।

4. याचिका के प्रस्तर 3 और 4 में कहा गया है कि बैंक कर्मचारियों के संगठनों एवं विपक्षी बैंक के बीच सम्पन्न समझौते के अनुसार बैंक में कार्यरत अंशकालीन कर्मचारियों को नियमित कर्मचारियों को मिलने वाले वेतन के 1/3, 1/2 और 3/4 वेतन पर नियमित किये जाने तथा अधीनस्थ कर्मचारियों की भर्ती में वरीयता दिये जाने का प्रावधान है लेकिन उन्हें यह लाभ अभी तक नहीं मिला है। प्रस्तर 5 में कहा गया है कि प्रार्थी श्री प्रदीप सहारिया द्वारा लगभग 7 वर्षों से लगातार कार्य करने के बावजूद विपक्षी बैंक ने समझौते के अनुसार आनुपातिक वेतन नहीं दिया तथा पूर्णकालिक कर्मचारी के रूप में समाविष्ट नहीं किया परन्तु उससे कनिष्ठ अनेक कर्मचारियों को लाभ दिया जा चुका है।

5. याचिका में एसोसियेशन ने मांग की है कि विपक्षी बैंक के परिपत्रों एवं द्विपक्षीय समझौतों के अनुसार श्री प्रदीप सहारिया से कनिष्ठ श्रमिकों को जिस तिथि से आनुपातिक वेतन दिया गया उसी तिथि से प्रार्थी को भी मय एरियर भुगतान किया जाय एवं साथ में अन्य सभी आर्थिक एवं अन्य लाभ भी दिलवाया जाए।

6. स्टेटमेन्ट ऑफ क्लेम के विरुद्ध वादोत्तर में विपक्षीगण ने याचिका के प्रस्तर 1,4,5,6 के कथन को अस्वीकार किया है। प्रस्तर 2 के कथन को स्वीकार किया है और प्रस्तर 3 के संबंध में यह उल्लेख किया है कि पूर्णकालिक अधिनस्थ स्टाफ की नियुक्ति के समय उन कर्मचारियों को वरीयता दी जाती है जो 1/3, 1/2 और 3/4 स्केल वेज में कार्य करते हैं लेकिन श्री प्रदीप सहारिया उक्त नियम के अन्तर्गत आच्छादित नहीं है। यूनियन और इण्डियन बैंक एसोसियेशन के बीच ऐसा कोई समझौता नहीं है कि 1/3, 1/2 और 3/4 स्केल वेज कर्मचारियों की नियुक्ति करते समय उन नियुक्तियों को भी वरीयता प्राप्त होगी जो एकमुश्त वेतन पर नियुक्त किये गये हैं। अतिरिक्त कथन में विपक्षीगण ने यह उल्लेख किया है कि श्री प्रदीप सहारिया एकमुश्त भुगतान के बदले विपक्षी बैंक की भरतपुर ब्रांच में दिनांक 12.10.2000 से शोचालय इत्यादि की सफाई के लिए रखे गये थे। श्री प्रदीप सहारिया की प्रतिदिन की कार्य अवधि एक घंटे से भी कम है जिसका यह तात्पर्य है कि उसकी अधिकतम कार्य अवधि 6 घंटे प्रति सप्ताह है इसलिये “Bipartite” समझौते के अनुसार कर्मचारी को 1050 रु एकमुश्त भुगतान किया जा रहा था। वर्तमान समय में उसे 1440 रु भुगतान किया जा रहा है।

7. श्री प्रदीप सहारिया अधीनस्थ स्टाफ के रूप में बैंक में कार्य करते रहे हैं इसलिये अधीनस्थ स्टाफ के रूप में उन्हें सेवा में नियमित किया जाने का प्रश्न नहीं उठता है। श्री प्रदीप सहारिया शोचालय आदि की सफाई के लिये लगाये गये हैं जिनकी कार्य अवधि प्रतिदिन एक घंटे से भी कम अवधि की है इसलिये वे बैंक सेवा में नियमित किये जाने के हकदार नहीं हैं।

8. आगे प्रस्तर 6 में यह कहा गया है संविदा पर कार्य कर रहे कर्मचारी के मामले में वरिष्ठ अथवा कनिष्ठ कर्मचारी होने का प्रश्न नहीं उठता है तथा ऐसे कर्मचारी की कार्य अवधि का आंकलन केवल उसी के अनुरूप और परिस्थिति में कार्य पर लगाये गये कर्मचारियों से

की जा सकती है। यह कहना गलत है श्री प्रदीप सहारिया की भांति ही कार्य करने वाले किसी कर्मचारी को 1/3, 1/4 या 3/4 वेज स्केल का लाभ दिया गया है। जहां तक सेवा के नियमितिकरण का प्रश्न है बैंक में नियुक्ति के लिए निर्धारित नियम और मापदंड के अनुसार क्षेत्रीय प्रबन्धक अपनी जरूरत के अनुसार स्थानीय रोजगार कार्यालय को मांग भेजते हैं जिसमें अभ्यर्थी की उम्र और शैक्षिक योग्यता का उल्लेख रहता है। रोजगार कार्यालय द्वारा जिन अभ्यर्थियों का नाम क्षेत्रीय प्रबन्धक को भेजा जाता है उनकी योग्यता परखने के लिए उनका साक्षात्कार होता है और चयनित अभ्यर्थियों की सूची चयन समिति द्वारा संस्तुति के लिए बैंक के मुख्य कार्यालय को भेजी जाती है। श्री प्रदीप सहारिया के मामले में उक्त नियुक्ति प्रक्रिया का कोई अनुसरण नहीं हुआ है इसलिये बैंक श्री प्रदीप सहारिया को सेवा में नियमित करने में समर्थ नहीं है। माननीय सर्वोच्च न्यायालय और उच्च न्यायालयों द्वारा अनेक मामले में यह अवधारित किया गया है कि दैनिक वेतन भोगी कर्मचारी नियमित किये जाने के हकदारी नहीं हैं और यह भी अवधारित किया गया है कि नियुक्ति की प्रक्रिया का अनुसरण किये बिना की गई नियुक्ति विधि विरुद्ध एवं भारतीय संविधान के अनुच्छेद 14 और 16 का उल्लंघन है तथा नियमित पदों पर नियुक्ति प्रदत्त प्रक्रिया का अनुसरण करके ही करनी चाहिए।

9. सेक्रेटरी, कर्नाटक राज्य एवं अन्य बनाम उमा देवी एवं अन्य में माननीय सर्वोच्च न्यायालय की संवैधानिक पीठ ने अपने दिनांक 10.04.2006 के निर्णय में यह अवधारित किया है कि जब तक नियत नियम एवं प्रक्रिया के अनुसार योग्य उम्मीदवारों की प्रतिस्पर्धा के उपरान्त नियुक्ति नहीं होती तब तक किसी नियुक्त व्यक्ति को नियमितिकरण का लाभ प्रदान नहीं किया जा सकता है। माननीय सर्वोच्च न्यायालय की उक्त सुस्थापित विधि व्यवस्था के अनुसार श्री प्रदीप सहारिया याचित अनुतोष पाने के हकदार नहीं हैं तथा उनकी आवेदन निरस्त होने योग्य है।

10. पत्रावली दिनांक 4.3.2014 के आदेशानुसार दिनांक 7.5.2014 को अप्रार्थी पक्ष की आवेदन के निस्तारण हेतु नियत थी जिसमें विपक्ष ने प्रार्थना की है कि इस मामले को आवेदन के साथ संलग्न दस्तावेजों के आधार पर समाप्त करने का आदेश पारित किया जाय। इसी बीच दिनांक 15.4.2014 को प्रार्थी श्री प्रदीप सहारिया ने पंजीकृत डाक से आवेदन दिनांकित 10.4.2014 प्रेषित किया जिसमें प्रार्थी ने यह प्रार्थना की है कि उसकी क्लेम याची को बल न दिये जाने के आधार पर निरस्त की जाय। उक्त आवेदन दिनांक 12.6.2014 को लोक अदालत में निस्तारण हेतु नियत किया गया लेकिन सभी पक्षकारों के उपस्थित न होने के कारण मामले का निस्तारण न हो सका। दिनांक 6.12.2014 को पत्रावली पुनः लोक अदालत में निस्तारण हेतु पक्षकारों को नोटिस देने के बाद नियत की गयी। लोक अदालत की कार्यवाही तथा प्रार्थी श्री प्रदीप सहारिया की आवेदन दिनांकित 10.4.2014 में अंकित विवरण निम्नवत है:

समक्ष माननीय केन्द्रीय सरकारी औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय जयपुर (राज०)

प्रदीप सहारिया बनाम देना बैंक

प्रार्थना पत्र व मुकदमा प्रकरण सं० 24/08 ता० पेशी 7/5/2014

श्रीमान जी,

उपरोक्त उनवानित प्रकरण न्यायालय श्रीमानजी में विचाराधीन था। प्रार्थी अंशकालीन सफाई कर्मचारी के पद पर कार्यरत था जिसने न्यायालय में पूर्ण कर्मचारी के रूप में मुकदमा पेश किया था। उक्त प्रकरण में प्रार्थी 1/3 वेतनमान पर नियुक्त 04.08.2012 को श्रीमान क्षेत्रीय कार्यालय, नई दिल्ली द्वारा पत्रांक एन.डी.आर. 1356/2012 को एक मेमोरेन्डम की कॉपी क्षेत्रीय कार्यालय से प्राप्त हुई। जो कि मेमोरेन्डम के द्वारा प्रार्थी ने शर्तों के अनुसार 1/3 वेतनमान पर वर्तमान में देना बैंक, भरतपुर शाखा में कार्यरत है। प्रार्थी 23.08.2012 से श्रीमान् के न्यायालय में तारीख पर लगातार हाजिर नहीं हो रहा है। प्रार्थी क्लेमेन्ट अब उक्त प्रकरण में आगे कोई कार्यवाही नहीं करना चाहता है तथा प्रार्थी अब उक्त प्रकरण को आगे नहीं चलाना चाहता है। प्रार्थी इस मुकदमें को वापिस लेना चाह रहा है।

अतः श्रीमानजी से प्रार्थना है कि प्रार्थी के उक्त प्रकरण को नोट प्रेस के आधार पर इसी स्टेज पर खारिज फरमाने की कृपा करें।

दिनांक: 10.04.2014

प्रार्थी
हस्ताक्षर पठनीय
प्रदीप सहारिया
वर्तमान 1/3 वेतनमान
देना बैंक, नुमाइश रोड,
भरतपुर (राज.)

No objection to withdrawal of the case by applicant

हस्ताक्षर अपठनीय

(Ankit Sharma)-Dena Bank-Manager Bharatpur

6.12.2014

हस्ताक्षर अपठनीय

06.12.2014

लोक अदालत

आज पत्रावली लोक अदालत में प्रस्तुत हुई। श्री प्रदीप सहारिया प्रार्थी अपने विद्वान प्रतिनिधि श्री आर.सी.जैन तथा श्री अंकित शर्मा, प्रबन्धक देना बैंक भरतपुर ब्रान्च, राजस्थान अपने विद्वान प्रतिनिधि एडवोकेट श्री राजेन्द्र के. सालेचा के साथ उपस्थित है। श्री अंकित शर्मा की पहचान उनके विद्वान प्रतिनिधि द्वारा की गयी है तथा श्री प्रदीप सहारिया की पहचान उनके विद्वान प्रतिनिधि तथा बैंक के प्रबन्धक श्री अंकित शर्मा द्वारा की गयी है।

सुलहनामा दिनांकित 10.4.2014 पर उभयपक्ष को सुना गया जिसमें प्रार्थी प्रदीप सहारिया ने यह प्रार्थना की है कि उनका स्टेटमेन्ट आफ क्लेम “बल न दिये जाने” के आधार पर खारिज किया जाए। आज बैंक के प्रबन्धक श्री अंकित शर्मा द्वारा आवेदन पर लिखित रूप में यह उल्लेख किया गया कि प्रार्थी द्वारा स्टेटमेन्ट आफ क्लेम वापस लेने में उन्हें आपत्ति नहीं है। उनकी पहचान उनके विद्वान प्रतिनिधि द्वारा की गयी है। श्री आर. सी. जैन, आवेदक के विद्वान प्रतिनिधि को भी प्रार्थी की आवेदन स्वीकार होने में आपत्ति नहीं है। सुलह की शर्त उभयपक्ष को पढ़कर सुनायी एवं समझायी गयी। शर्तों को उभयपक्ष ने स्वच्छता स्वीकार किया, अतः

सुलहनामा की शर्तों के आधार पर मामले का निरतारण किया जाता है तथा “बल न दिये जाने” के आधार पर प्रार्थी प्रदीप सहारिया की स्टेटमेन्ट आफ क्लेम खारिज की जाती है। प्रार्थी प्रदीप सहारिया की आवेदन दिनांकित 10.4.2014 तदनुसार स्वीकार की जाती है। प्रदीप सहारिया की आवेदन दिनांकित 10.4.2014 एवार्ड का अंश होगी।

12. न्यायानिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 15 जुलाई, 2015

का०आ० 1472.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट ((41/2006) प्रकाशित करती है, जो केन्द्रीय सरकार को 15/07/2015 को प्राप्त हुआ था।

[सं. एल-12011/140/2005-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th July, 2015

S.O. 1472.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 41/2006) of the Central Government Industrial Tribunal Cum Labour Court, Jaipur as shown in the Annexure in the industrial Dispute between the management of Dena Bank and their workmen, received by the Central Government on 15/7/2015.

[No. L-12011/140/2005-IR(B-II)]

RAVI KUMAR, Desk Officer

अनुबन्ध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर
सी.जी.आई.टी. प्रकरण सं. 41/2006

भरत पाण्डेय, पीठासीन अधिकारी
रेफरेन्स नं. L-12011/140/2005-IR(B-II)

दिनांक 20/04/2006

The General Secretary,
Dena Bank Employees Union,
C/o Dena Bank, M.I. Road
Jaipur (Rajasthan)
Vs.
1. The Regional Manager,
Dena Bank,
Kaltron Chambers,
18/7-8, Arya Samaj Road, Karol Bagh,
New Delhi-110005

प्रार्थी की तरफ से : श्री जे एल. शाह- प्रतिनिधि
अप्रार्थी की तरफ से : श्री राजेन्द्र सालेचा - एडवोकेट

: पंचाट :

दिनांक 6.12.2014

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 20.04.2006 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है:-

2. "Whether the action of the management of Dena Bank through Regional Manager, New Delhi for not giving 3/4 wages and status of permanent part time cleaner to Shri Vishnu Kumar Saini from 1994 is legal and justified? If not, to what relief the claimant is entitled to and from which date?"

3. स्टेटमेंट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्ततः प्रार्थी देना बैंक एम्पलाईज यूनियन का कथन है कि हमारी यूनियन मान्यता प्राप्त है। विवाद से सम्बन्धित कर्मचारी श्री विष्णु कुमार सैनी हमारी यूनियन के सदस्य है। विपक्षी बैंक ने दिनांक 20.3.1994 को हल्दियों के रास्ता, जयपुर में अपनी शाखा खोली थी और दिनांक 20.3.1994 को ही उक्त शाखा में श्री विष्णु कुमार सैनी को एकमुश्त वेतन पर नियुक्त किया था और तब से श्री विष्णु कुमार सैनी कार्य करते जा रहे हैं। मेहनत, निष्ठा और ईमानदारी से कार्य करते हुए 12 साल व्यतीत होने के बाद भी नियमित; (Regular) नहीं किया जा रहा है।

4. श्री विष्णु कुमार सैनी को 740 रु. प्रतिमाह वेतन इण्डस्ट्रियल लेबर सेटलमेंट के आधार पर दिया गया जो अब पिछले द्विपक्षीय समझौते के बाद एक हजार पचास रु. प्रतिमाह है जबकि ऑल इण्डिया बैंक एम्पलाईज कोऑर्डिनेशन कमेटी से 1987 में बैंक के साथ हुए समझौते में पार्ट- टाईम सफाई कर्मचारियों को शाखाओं में कारपेट एरिया के आधार पर वेतन भुगतान तय हुआ था और बैंक द्वारा इस सम्बन्ध में दिनांक 20.11.87 को सर्कूलर भी जारी किया गया था जिसकी फोटोप्रति स्टेटमेंट ऑफ क्लेम के साथ संगलनक संख्या 1 है। दिनांक 20.11.87 का सर्कूलर दिनांक 20.3.1994 को बैंक की शाखा खोलने के दिन लागू थी। हल्दियों का रास्ता स्थित शाखा का कारपेट एरिया 3180 वर्गफिट था। श्री विष्णु कुमार सैनी को विपक्षी बैंक द्वारा सफाई कर्मचारी की वेतन श्रृंखला में 3/4 वेतन देना चाहिए था परन्तु ऐसा ना करके केवल 740 रु. प्रतिमाह वेतन दी जाती थी। इस प्रकार विपक्षी बैंक अनुचित श्रम व्यवहार का दोषी है क्योंकि दिनांक 20.11.87 को परिपत्र न लागू कर मनमाना तरीका बैंक ने अपनाया है। श्री विष्णु कुमार सैनी 20.3.1994 से ही वेतन श्रृंखला का 3/4 वेतन तथा उसका समस्त लाभ प्राप्त करने के अधिकारी है।

5. आगे प्रार्थी का याचिका के प्रस्तर 5 में यह कथन है कि विपक्षी बैंक ने ऑल इण्डिया देना बैंक एम्पलाईज कोऑर्डिनेशन कमेटी के साथ यह करार किया की सब-स्टाफ के फुल टाईम रिक्त पदों में भर्ती वेतन श्रृंखला में कारपेट एरिया के आधार पर नियुक्त कर्मचारियों में से ही की जावेगी। श्री विष्णु कुमार सैनी की नियुक्ति के बाद ऐसी नियुक्तियां

कई बार की गई है। इस प्रकार बैंक द्वारा सर्कूलर दिनांकित 20.11.87 का उल्लंघन किया गया है। यदि श्री विष्णु कुमार सैनी को दिनांक 20.11.87 के सर्कूलर के अनुसार वेतन दिया गया होता तो भी श्री विष्णु कुमार सैनी बहुत पहले फुल टाईम सब स्टाफ में नियमित (Regular) हो गये होते। बैंक द्वारा भेदभाव करने और सर्कूलर का पालन न करने से श्री विष्णु कुमार सैनी आज तक इस लाभ से वंचित है। बैंक की हल्दियों का रास्ता, जयपुर शाखा में दो फुल टाईम सब स्टाफ कार्यरत थे उनमें से एक व्यक्ति श्रीराम नाथ मीणा का दिनांक 15.10.2000 को निधन हो गया जिसके कारण वह पद अब भी रिक्त है। इस रिक्त पद का कार्य भी श्री विष्णु कुमार सैनी से लिया जा रहा है इस प्रकार श्री विष्णु कुमार सैनी दिनांक 15.10.2000 से लगातार बैंक की शाखा में पूरे समय कार्य करते आ रहे हैं और पूर्ण सहयोग दे रहे हैं।

6. बैंक की हल्दियों का रास्ता, जौहरी बाजार, जयपुर शाखा के सिनियर मैनेजर इस शाखा में पद स्थापना के बाद से ही श्री विष्णु कुमार सैनी को परेशान करने लगे और श्री विष्णु कुमार सैनी की सेवा भी मौखिक आदेश से समाप्त की दी, जिसका यूनियन ने विरोध किया तब बैंक के उच्चाधिकारियों के हस्तक्षेप पर सेवा बहाल हुई। उसके बाद शाखा के वरिष्ठ प्रबन्धक कर्मचारि को परेशान करते रहे और माह जून सन् 2004 के वेतन के भुगतान माह जुलाई 2004 में नहीं किया और कर्मचारी को वेतन वाउचर पर स्वयं अपने हस्ताक्षर कर धनराशि उठाई तथा कर्मचारी को वेतन वाउचर के पुस्तक पर हस्ताक्षर भी नहीं करने दिया जबकि कर्मचारी हर माह मिलने वाला वेतन वाउचर के पुस्तक पर हस्ताक्षर करता आ रहा था। इस प्रकार वरिष्ठ प्रबन्धक कर्मचारी की सेवा समाप्त करने तथा हानि पहुंचाने की बदनियतपूर्ण कार्यवाही करते रहे हैं।

7. आगे यह कहा गया है कि शाखा के वरिष्ठ प्रबन्धक ने माह जुलाई 2004 के वेतन का भुगतान दिनांक 26.8.2004 तक नहीं किया तब वरिष्ठ प्रबन्धक को नोटिस देकर वेतन भुगतान की मांग की गयी। इसके बाद दिनांक 27.8.2004 को बदनियतपूर्ण तरीके से प्रार्थी को वेतन "वेतन शीर्ष" में न देकर "सण्डी एक्सपेन्सेज हेड" में दिया गया जबकि भुगतान की राशि वेतन से सम्बन्धित था, इससे स्पष्ट है कि शाखा के वरिष्ठ प्रबन्धक कर्मचारी की सेवाएं समाप्त करने पर तुले हुए और बदनियतपूर्ण अनफेयर लेबर प्रैक्टिस अपनायी थी।

8. प्रस्तर 10 में यह कथन है कि प्रार्थी श्री विष्णु कुमार सैनी दिनांक 20.3.1997 से ही विपक्षी बैंक की हल्दियों का रास्ता, जौहरी बाजार, जयपुर शाखा में कार्य करता आ रहा है और उसे बैंक द्वारा किये गये समझौते और सर्कूलर दिनांकित 20.11.87 के अनुसार कारपेट एरिया के अनुरूप वेतन न देकर फिक्सड वेतन 740 रु. दिया जा रहा है जो वर्तमान में 1050 रु. है। इस प्रकार बैंक द्वारा अपने किये समझौते का उल्लंघन करने के साथ-साथ प्रार्थी को लगातार कई वर्षों तक फिक्स वेतन देकर उसका शोषण किया जा रहा है और उसके वेतन भुगतान की प्रक्रिया जो उसकी नियुक्ति से चल रही थी उसे बदलकर उसके नियोजन को समाप्त करने की बदनियतपूर्ण कोशिश की जा रही है। इस सम्बन्ध में विवाद केन्द्रीय सहायक श्रम आयुक्त जयपुर के समक्ष प्रस्तुत किया गया लेकिन कर्मचारी विरोधी रूख के कारण विवाद को न्यायनिर्णयन हेतु न्यायाधिकरण को प्रेषित किया गया। अतः प्रार्थी ने प्रार्थना कि है कि श्री विष्णु कुमार

सैनी को कारपेट एरिया के आधार पर सब-स्टाफ की वेतन श्रृंखला का 3/4 वेतन एवं भत्ता सन् 1994 से दिलवाया जाय और सन् 1994 से ही पार्ट- टाईम क्लीनर के पद पर स्थायी किया जाय एवं पिछला बकाया दिलवाया जाय।

9. विपक्षी बैंक की तरफ से वादोत्तर प्रस्तुत कर याचिका के प्रस्तर 1 के सम्बन्ध में कहा गया है कि उत्तर की आवश्यकता नहीं है और प्रार्थी श्री विष्णु कुमार सैनी यूनियन के सदस्य है इस तथ्य को सिद्ध करने का भार उन पर है। यह भी कहा गया है कि केवल बैंक का कर्मचारी वादी यूनियन का सदस्य हो सकता है और श्री विष्णु कुमार सैनी विपक्षी बैंक के कर्मचारी नहीं है तथा उन्हें कोई नियुक्ति पत्र भी नहीं दिया गया है अतः यूनियन द्वारा प्रस्तुत वाद पोषणीय नहीं है। प्रस्तर 2 के सम्बन्ध में यह तथ्य स्वीकार किया गया है कि हल्दियों का रास्ता, जयपुर शाखा दिनांक 20.3.1994 को खोली गयी और शाखा की सफाई के लिए एकमुश्त धनराशि के भुगतान के आधार पर श्री विष्णु कुमार सैनी को रखा गया। बैंक कर्मचारी यूनियन और भारतीय बैंक संगठन के समझौते के अनुसार श्री विष्णु कुमार सैनी जैसे कर्मचारी को निम्न दर से भुगतान अनुमन्य है :-

1. सप्ताह में तीन घण्टे तक का कार्य..... बैंक को विवेक के अनुसार तथा अल्पतम 450 रु.

2. सप्ताह में तीन घण्टे से ज्यादा लेकिन छः घण्टों से कम..... बैंक के विवेक के अनुसार कम से कम 740 रु.। उक्त दर के अनुसार श्री विष्णु कुमार सैनी के सन्दर्भ में ज्यादा धनराशि से सम्बन्धित मांग पोषणीय नहीं है। श्री विष्णु कुमार सैनी द्वारा सफाई का अपेक्षित कार्य 1 के कार्य से भी कम है। श्री विष्णु कुमार सैनी को जब कार्य पर रखा गया उस समय और उसके बाद भी उन्हें इस बात की अच्छी तरह से जानकारी थी कि उनके कार्य पर रखे जाने को नियमित कर्मचारी के रूप में नियुक्ति प्रक्रिया अपनाये बिना परिवर्तित नहीं किया जा सकता, अतः माननीय सर्वोच्च न्यायालय द्वारा प्रदत्त विधि व्यवस्था के अनुसार श्री विष्णु कुमार सैनी सेवा की अवधि के आधार पर नियमित किये जाने की मांग नहीं कर सकते। श्री विष्णु कुमार सैनी को 740 रु० प्रतिमाह का भुगतान किया जाता था और उसके बाद के समझौते के अनुसार उन्हें 1050 रु० प्रतिमाह का भुगतान किया जाता था। इस धनराशि में आगे चलकर बढ़ोतरी हुई और नवें समझौते के अनुसार वर्तमान समय में उन्हें 1440 रु० का भुगतान किया जा रहा है। जहां तक दिनांक 20. 11.87 के समझौते का प्रश्न है यह केवल अंशकालीन स्थायी कर्मचारियों से सम्बन्धित है और फिक्स धनराशि का भुगतान प्राप्त करने वाले कर्मचारियों पर लागू नहीं होता है, अतः अस्थायी कर्मचारी/आकस्मिक कर्मचारी को कारपेट एरिया के हिसाब से दिनांक 20.11.87 के सर्कुलर के अनुसार भुगतान करने पर विचार करने का प्रश्न नहीं उठता है क्योंकि ऐसी नियुक्ति बैंक की नियुक्ति निति के विरुद्ध है जो विधि के अनुसार अनुमन्य नहीं है तथा जिसे पीछे के दरवाजे से प्रवेश की संज्ञा दी जाती है। स्टेटमेन्ट ऑफ क्लेम के जवाब में विपक्षी बैंक ने श्री विष्णु कुमार सैनी जैसे कर्मचारियों की नियुक्ति के सम्बन्ध में नियुक्ति की प्रक्रिया की प्रक्रिया का उल्लेख करते हुए यह कहा है कि नियुक्ति के नियमों के अनुसार

प्रार्थी श्री विष्णु कुमार सैनी का चयन नहीं हुआ है और इस कारण दिनांक 20.11.87 के सर्कुलर का प्राविधान उनके मामले में लागू नहीं होता है। विपक्षी बैंक ने उक्त समर्थन में माननीय सर्वोच्च न्यायालय के दृष्टान्तों का उल्लेख किया है और यह कहा है कि दिये गये नियुक्ति प्रक्रिया के अनुसार नियुक्ति किये बिना कोई व्यक्ति नियमित किये जाने का हकदार नहीं।

10. याचिका के प्रस्तर 4,5,6,7,8,9,10,11 और 12 के कथन को अस्वीकार करते हुए यह कहा गया है कि दिनांक 20.11.87 का सर्कुलर आई आर 29 दिनांकित 13.7.93 द्वारा विलोपित कर दिया गया। शाखा का कारपेट एरिया 3170 स्क्वियर फीट है। श्री विष्णु कुमार सैनी की बैंक में कभी नियुक्ति नहीं की गयी और न ही वह स्थायी कर्मचारी है इसलिये वह सब-स्टाफ की 3/4 वेतन पाने के हकदार नहीं है तथा उसके साथ कोई अनुचित श्रम व्यवहार नहीं किया गया। उसे समझौते के अनुसार ही भुगतान किया जा रहा है

11. प्रस्तर 5 के कथन को स्वीकार कर यह कहा गया है कि बैंक और ऑल इण्डिया देना बैंक एम्पलाईज कोऑर्डिनेशन कर्मचारी की सहमति दिनांकित 5.12.96 के अनुसार सेवा में शामिल होने की तिथि के अनुसार सबसे वरिष्ठ कर्मचारी से रिक्त पदों को भरने की कार्यवाही की जावेगी

12. वर्तमान समय में हल्दियों का रास्ता, जयपुर शाखा में 2 पूर्णकालिक सब-स्टाफ नियुक्त हैं जिन्हें समझौते के अनुसार पारिश्रमिक का भुगतान किया जाता है जितनी अवधि के लिये वे कार्य करते हैं। प्रार्थी श्री विष्णु कुमार सैनी को नियमित रूप से भुगतान किया जाता है। वह बैंक के स्थायी कर्मचारी नहीं हैं इसलिये उनकी सेवा समाप्ति का प्रश्न नहीं उठता है। श्री विष्णु कुमार सैनी बैंक के कर्मचारी नहीं हैं इसलिये उनको किया गया भुगतान वेतन हेड से नहीं किया जाता है और उसे अन्य खर्चों के मद से किया जाता है। दिनांक 20.11.87 के सर्कुलर को हल्दियों का रास्ता, जयपुर शाखा के खुलने के पूर्व ही दिनांक 13.7.93 के सर्कुलर से विलोपित किया गया है इसलिये दिनांक 20-11-87 के सर्कुलर के आधार पर प्रार्थी की मांग गलत है। सेवा के सन्दर्भ में यूनियन द्वारा की गयी मांग अनुचित है और विधि विरुद्ध है और श्री विष्णु कुमार सैनी को पीछे के रास्ते से प्रवेश दिलाया जाने का प्रयास है अतः याचिका की याचिका निरस्त की जाए।

13. पत्रावली साक्ष्य में चल रही थी। दिनांक 6.12.14 को लोक अदालत की कार्यवाही नियत थी। दिनांक 5.12.2014 को श्री विष्णु कुमार सैनी ने आवेदन प्रस्तुत की कि उनका मामला लोक अदालत में निस्तारण के लिये नियत किया जाये। उन्होंने यह भी बताया की बैंक के प्रतिनिधि और अधिकारी लोक अदालत में मुकदमें का निस्तारण करवाने के लिये उपस्थित रहेगे। उक्त आधार पर श्री विष्णु कुमार सैनी की आवेदन स्वीकार की गयी और मुकदमें के निस्तारण हेतु पत्रावली दिनांक 6.12.14 को लगने वाली लोक अदालत के लिये नियत की गयी।

14. लोक अदालत में उभयपक्ष की तरफ से सुलह नामा प्रस्तुत हुआ जो निम्नवत है:-

समक्ष माननीय केन्द्र सरकार औद्योगिक न्यायाधिकरण जयपुर

केस नं - : CGIT 41/2006

देना बैंक एम्पलाईज यूनियन जयपुर

बनाम

रिजनल मैनेजर, देना बैंक, नई दिल्ली

विषय:- विवाद को समाप्त करने हेतु प्रार्थना-पत्र

मान्यवर,

प्रार्थी निरंतर निवेदन करता है:-

(1) यह उक्त विवाद में आगे कार्यवाही नहीं करना चाहता है व इस विवाद को वापस लेकर समाप्त कराना चाहता है।

अतः निवेदन है इस विवाद को समाप्त करने के आदेश पारित किये जावें।

दिनांक: 16/12/14

प्रार्थी

Identified by me

हस्ताक्षर अपठनीय

हस्ताक्षर अपठनीय

(विष्णु कुमार सैनी)

06/12/14

There is no objection

हस्ताक्षर अपठनीय

To Bank in applicant

अधिकृत प्रतिनिधि

Withdrawing the case today

देना बैंक एम्पलाईज यूनियन

In Lok Adalat

जयपुर

हस्ताक्षर अपठनीय

06/12/2014

P.S. Kalyan

Chief Manager

Dena Bank

HKR Jaipur

Identified by me

हस्ताक्षर अपठनीय

Counsel for Dena Bank 6/12/2014

समक्ष माननीय केन्द्र सरकार औद्योगिक न्यायाधिकरण जयपुर

केस नं - : CGIT 41/2006

देना बैंक एम्पलाईज यूनियन (राजस्थान) जयपुर

बनाम

रिजनल मैनेजर, देना बैंक, नई दिल्ली

मान्यवर,

प्रार्थी निवेदन करता है कि इस प्रकरण में देना बैंक एम्पलाईज यूनियन (राजस्थान) जयपुर की ओर से प्रार्थी जयन्ती लाल शाह एडवोकेट को समझौता पत्र प्रस्तुत करने हेतु अधिकृत किया है। कृपया प्रार्थी को इसकी अनुमति प्रदान करें। ताकि सुलह नामा रेकार्ड में रहे।

दिनांक 06/12/14

प्रार्थी

हस्ताक्षर अपठनीय

(जे.एल. शाह)

No objection to the Bank

हस्ताक्षर अपठनीय

Adv.

15. लोक अदालत में की गयी कार्यवाही का विवरण निम्न प्रकार है:-

लोक अदालत

6-12-14 आज पत्रावली लोक अदालत में प्रस्तुत हुई। प्रार्थी श्री विष्णु कुमार सैनी व्यक्तिगत रूप से उपस्थित है। याची के अर्थात् यूनियन के विद्वान प्रतिनिधि श्री जयन्ती लाल शाह, एडवोकेट उपस्थित है। विपक्षी देना बैंक के विद्वान प्रतिनिधिगण श्री राजेन्द्र कुमार सालेचा, एडवोकेट, बैंक के प्रधान प्रबन्धक श्री प्रेमसिंह कल्याण के साथ उपस्थित है। पत्रावली लोक अदालत में निस्तारण हेतु लगी है। यूनियन के प्रतिनिधि नहीं उपस्थित हैं। यूनियन के विद्वान अधिवक्ता श्री जयन्ती लाल शाह एडवोकेट ने यूनियन की तरफ से समझौता प्रस्तुत करने हेतु प्रार्थना-पत्र प्रस्तुत किया है। प्रार्थना-पत्र पर उभयपक्ष को सुना। बैंक की तरफ से आवेदन पर अनपाति अंकित की गयी है। अतः उक्त तथ्य एवं परिस्थिति में आवेदन स्वीकार की जाती है। यूनियन की तरफ से यूनियन के विद्वान प्रतिनिधि को सुलहनामा प्रस्तुत करने की अनुमति प्रदान की जाती है क्योंकि सुलहनामा उभयपक्ष के हित में है। पत्रावली सुलह हेतु पेश हो।

(हस्ताक्षर अपठनीय)

पीठासीन अधिकारी

लोक अदालत

06-12-14 आज पत्रावली लोक अदालत में प्रस्तुत हुई। प्रार्थी श्री विष्णु कुमार सैनी व्यक्तिगत रूप से उपस्थित है। याची के विद्वान प्रतिनिधि श्री जयन्ती लाल शाह, एडवोकेट तथा विपक्षी बैंक देना बैंक के विद्वान प्रतिनिधि श्री राजेन्द्र कुमार सालेचा, एडवोकेट, उपस्थित है। बैंक श्री प्रेम सिंह कल्याण प्रधान प्रबन्धक उपस्थित है। उभयपक्ष की तरफ से सुलहनामा आज प्रस्तुत हुआ जिसमें प्रार्थी श्री विष्णु कुमार सैनी द्वारा प्रार्थना की गयी है कि वह वाद में आगे कोई कार्यवाही नहीं करना चाहते हैं और विवाद से सम्बन्धित इस वाद को वापस लेकर समाप्त करना चाहते हैं।

प्रार्थी श्री विष्णु कुमार सैनी की पहचान उनके विद्वान प्रतिनिधि द्वारा तथा बैंक के प्रधान प्रबन्धक श्री प्रेमसिंह कल्याण के पहचान बैंक के विद्वान प्रतिनिधि द्वारा की गयी है। सुलह की शर्तें उभयपक्ष को पढ़कर सुनायी एवं समझायी गयी। सुलह की शर्तें पक्षकारों द्वारा स्वेच्छा स्वीकार की गयी। अतः इस मामले के सुलहनामा की शर्तों के आधार पर निस्तारित किया जाता है। सुलह नामा दिनांकित 06.12.14 एवार्ड का अंश होगा।

16. न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी